CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

LORA PETSO, Petitioner, v. THE CITY OF EDMONDS, Respondent	)	**Case No. 09-3-0005** ***(Petso II)*** **FINAL DECISION AND ORDER**

SYNOPSIS

On December 16, 2008, the City of Edmonds adopted Ordinance No. 3717, updating its Parks, Recreation and Open Space Comprehensive Plan, following a public participation process that began in March 2007.

Petitioner Lora Petso filed a timely Petition for Review challenging the City's action on a number of grounds. Ms. Petso took issue with the City's reduction of level of service (LOS) standards for several categories of parks or recreation facilities and, especially, the City's failure to effectively address the loss of the Sherwood Park ball fields. In Ms. Petso's view, the Plan was fatally flawed because it failed to match identified service deficits with plans for park acquisition or development.

The Board found most of Petitioner's claims to be without merit. The Board found that the City acted within its legislative discretion in adopting its 2008 Parks Plan. However, the Board ***remanded*** *the 2008 Parks Plan to the City to address two clear errors: one concerning notice and another concerning consistency with the Comprehensive Plan abandonment policy.*

On all other matters challenged by Petitioner – other notice and participation matters, late amendments, once-a-year amendment process, identification of lands useful for public purposes, consistency with the Capital Facilities Plan and population targets, the planning requirements for the parks element, planning for the unincorporated UGA, LOS requirements, and compliance with GMA Planning Goals 9 (Open space and recreation), 11 (Citizen participation), and 12 (Public facilities and services) – the Board found that Ms. Petso ***had not carried the burden of proof****. The Board* ***denied*** *her request for an order of invalidity.*

I. PROCEDURAL HISTORY[1]

On February 18, 2009, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review from Lora Petso (P**etitioner** or **Petso**), *pro se*, challenging the City of Edmonds's (**Edmonds** or **City**) adoption of Ordinance No. 3717. Ordinance 3717 amended the City's Comprehensive Plan by updating its Parks, Recreation and Open Space Plan (**2008 Parks Plan)**.

The Board held a Prehearing Conference and issued its Prehearing Order on March 26, 2009. On April 3, 2009, the Board issued a Corrected Statement of Legal Issues.[2] The City subsequently provided its document indices and core documents, including its 2007 Comprehensive Plan and its Parks Plans for 2001 and 2008.[3] Petitioner filed a Motion to Supplement the Record which was largely granted by the Board's Order on Motions issued May 11, 2009.

Briefs and exhibits on the merits were timely filed as follows:

- May 28, 2009 - Petitioner's Prehearing Brief with Petso Exhibits 1-27 (**Petso PHB**)
- June 11, 2009 - Reply Brief of Respondent City of Edmonds with City Exhibits 1-12 (**City Response**)
- June 18, 2009 – Petitioner's Reply Brief with Petso Exhibits 28-33 (**Petso Reply**)

In this Final Decision and Order, the Board uses the parties' numbering for the referenced exhibits, e.g., Petso Ex. 1, City Ex. 2.

Presiding Officer Margaret Pageler convened the Hearing on the Merits at 10:00 a.m. on June 25, 2009, in the Board's offices at 800 Fifth Avenue, Seattle. Board member David Earling was also present. Petitioner Lora Petso appeared *pro se*, and was accompanied by Roger Hertrich. Scott Snyder represented the City of Edmonds and was accompanied by Edmonds Parks Director Brian McIntosh and by Carry Porter of Ogden Murphy Wallace P.L.L.C. Court

[1] The complete chronology of procedures in this case is attached as Appendix A.

[2] The Legal Issues, as corrected, are set forth in full in Appendix B.

[3] The core documents are cited herein by their core designations as follows:

- Core A - Edmonds Comprehensive Plan as amended 2007
- Core B - Edmonds Comprehensive Plan effective 12/08
- Core C - Edmonds Transportation Element, 2002
- Core D - 2000 Bikeway Comprehensive Plan
- Core E - Walkway Plan, 2002 Update
- Core F - Parks, Recreation and Open Space Comprehensive Plan 2001
- Core G - Parks, Recreation and Open Space Comprehensive Plan 2008

reporting services were provided by Christy Sheppard of Byers & Anderson, Inc. The hearing was adjourned at 12:30 p.m.

The hearing provided the Board the opportunity to ask clarifying questions of the parties and to develop a thorough understanding of the matters at issue. The Board ordered a transcript of the hearing. The transcript was received on June 30, 2009, and is cited herein as **HOM**.

II. STANDARD AND SCOPE OF REVIEW

Upon receipt of a petition challenging a local jurisdiction's GMA actions, the legislature directed that the Boards, "after full consideration of the petition, shall determine whether there is compliance with the requirements of [the GMA]." RCW 36.70A.320(3); *see also*, RCW 36.70A.280, .300(1).

> The Board is empowered to determine whether county decisions comply with GMA requirements, to remand noncompliant ordinances to counties, and even to invalidate part or all of a comprehensive plan or development regulation until it is brought into compliance.

*Lewis County v. Western Washington Growth Management Hearings Board (**Lewis County**)*, 157 Wn.2d 488 at 498, fn. 7, 139 P.3d 1096 (2006).

The GMA creates a high threshold for challengers. A jurisdiction's GMA enactment is presumed valid upon adoption. RCW 36.70A.320(1). "The burden is on the petitioner to demonstrate that [the challenged action] is not in compliance with the requirements of [the GMA]." RCW 36.70A.320(2).

In *Swinomish Indian Tribal Community, et al. v Western Washington Growth Management Hearings Board*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007), the Supreme Court summarized the Board's standard of review:

> The Board is charged with determining compliance with the GMA and, when necessary, invalidating noncomplying comprehensive plans and development regulations. The Board "shall find compliance unless it determines that the action by the state agency, county or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." RCW 36.70A.320(3). An action is "clearly erroneous" if the Board is "left with the firm and definite conviction that a mistake has been committed." "Comprehensive plans and development regulations [under the GMA] are presumed valid upon adoption." RCW 36.70A.320(1). Although RCW 36.70A.3201 requires the Board to give deference to a [jurisdiction], the [jurisdiction's] actions must be consistent with the goals and requirements of the GMA.

161 Wn.2d at 423-24 (internal case citations omitted).

As to the degree of deference to be granted under the clearly erroneous standard, the *Swinomish* Court stated:

> The amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give the [jurisdiction's] actions a "critical review" and is a "more intense standard of review" than the arbitrary and capricious standard.

Id. at 435, fn. 8 (internal citations omitted).

The scope of the Board's review is limited to determining whether a jurisdiction has achieved compliance with the GMA only with respect to those issues presented in a timely petition for review. RCW 36.70A.290(1).

III. BOARD JURISDICTION AND PRELIMINARY MATTERS

A. BOARD JURISDICTION

The Board finds that the Petition for Review was timely filed, pursuant to RCW 36.70A.290(2). The Board finds that Petitioner has standing to appear before the Board, pursuant to RCW 36.70A.280(2). The Board finds that it has jurisdiction over the subject matter of the petition pursuant to RCW 36.70A.280(1).

B. PRELIMINARY MATTERS

City Motion to Dismiss Petitioner's Notice Objections

The City moved to dismiss Petitioner's issues regarding improper notice on the grounds that Petitioner had failed to raise these objections during the Parks Plan public process, and thus lacked standing to challenge the sufficiency of notice before the Board. City Response, at 5. Ms. Petso replied that participation standing does not require a petitioner to state all her legal issues during the public process, but rather to participate with respect to the "matter" that is the subject of the subsequent appeal. Petso Reply, at 3-4, citing *Wells v. Western Washington Growth Management Hearings Board,* 100 Wn. App. 657, at 673 (2000). At the Hearing on the Merits, the City **withdrew** its motion, indicating that Petitioner's record citations were persuasive.

Petitioner's Motion to Strike City's Second Amended Indices

With its Response Brief, the City submitted a set of Second Amended Indices and several additional documents:

- 2-TT - Excerpt City Council Minutes, March 27, 2007 – containing authorization for Mayor to sign a professional services agreement with Hough Beck & Baird Inc. for consulting services to update the Edmonds Parks, Recreation and Open Space Comprehensive Plan.

- 2-UU - Agenda and Sign-in Sheet for June 20, 2007, public workshop. (City Response Ex. 6 and 7).
- City Response Ex. 5 - Affidavit of Posting and Publication – Attestation of City of Edmonds Parks and Recreation Director Brian McIntosh with summary of public involvement program regarding the parks comprehensive plan amendment process, authenticating attached notices, press releases, and publications.
- City Response Ex. 12 – Countywide Planning Policies, Snohomish County Ordinance 93-004. City requests official notice (City Response, at 21, fn. 6).

Petitioner moved to strike the Second Amended Indices as untimely. Petso Reply at 4-5. She also moved to strike City Response Exhibits 5, 6, 7, and 12 because they are not part of the record and lack any indication of authenticity. *Id*. at 5. Petitioner in particular objected to the Brian McIntosh Affidavit and memorandum concerning the Parks Plan public process, both of which were prepared and dated in early April, some five months after the Council adopted the amended Parks Plan. *Id.*

The Board finds that City Response Exhibit 5 - the Brian McIntosh Affidavit - usefully authenticates a number of attached notices, press releases, and publications that are a **part of the record** of the City's public process in 2007-2008. The Board takes Mr. McIntosh's memorandum summarizing various components of the public process for what it purports to be – an after-the-fact listing of various elements of the process. The Board finds this to be a helpful outline when matched against specific exhibits in the record.

The Board finds that City Response Exhibits 6 and 7 are the Facilitator Instructions and Sign-in Sheet for the June 20, 2007, public workshop and are properly included in the City's Second Amended Indices as **part of the record**.

Pursuant to WAC 242-02-660(4), the Board **officially notices** the Countywide Planning Policies for Snohomish County (City Response, Ex. 12).

At the Hearing on the Merits, the Board denied Petitioner's motion to strike**.**

Post-Hearing Filing

WAC 242-02-810 provides: "Unless requested by or authorized by a board, no post hearing evidence, documents, briefs or motions will be accepted." At the Hearing on the Merits, the Presiding Officer asked the City to provide a complete copy of the consulting contract for the Parks Plan amendment process. The Board received the document – identified as Index 2-G - on July 1, 2009.

C. Prefatory Note

Ms. Petso challenges the City's adoption of the 2008 Parks Plan as violating a number of GMA requirements. The specific procedural or substantive issues which she raises require analysis of multiple provisions of the statute. In reordering the Statement of Legal Issues in the Prehearing Order, the Presiding Officer attempted to provide an outline that would reduce

overlap and repetition in the briefing and decision. This Final Decision and Order follows the outline established in the Statement of Legal Issues and in Petitioner's briefing. This results in some redundancy and cross-referencing, but seemed the most careful method to ensure that each of Petitioner's concerns was addressed.

IV. FINDINGS OF FACT

Having reviewed the briefs and exhibits submitted by the parties, having heard argument, and being fully informed, the Board makes the following findings of fact.

1. The City of Edmonds began its process to update its Parks Plan in March 2007. City Ex. 3.
2. The City of Edmonds has adopted a process and deadlines for notice and public participation in connection with adoption of comprehensive plan elements or amendments. The process is found in Edmonds Community Development Code **[ECDC**] Chapter 20.00[4] and the notice requirements are in ECDC 1.03.030.
3. The City Council, on March 17, 2007, approved a contract with Hough Beck and Baird, Inc. for consulting services to update the Parks Plan. City Ex. 3, 4; Index 2-TT; Index 2-G. The contract established a public participation process in addition to the code requirements of ECDC 20.00.
4. In March 2007, the City Council appointed a committee of 22 stakeholders to advise the City in updating the Parks Plan. Core G, at 1-2.
5. On June 20 and September 16, 2007, the City held public meetings to gather citizen input concerning updating the Parks Plan. City Ex. 5; City Response, at 9.
6. To assist it in gathering community input to the Parks Plan update, the City conducted a telephone survey of 300 randomly-selected residents. The City also conducted an open-ended web survey. Core G, App. B.
7. The Planning Board was briefed on the Parks Plan update at its meetings on November 11, 2007, and February 13, 2008. Petso Ex. 6; Index 1-X and 1-C. On February 27, 2008, the Planning Board held a public hearing and adopted the proposed Parks Plan unanimously. Index 1-I; HOM, at 50.
8. The City staff provided the City Council with responses to two sets of written comments from Ms. Petso, dated April 15, 2008 and May 2, 2008. Petso Ex. 12. City staff also made revisions to the proposed Parks Plan in response to Ms. Petso's comments and highlighted those revisions in subsequent copies of the Plan provided to City Council. *Id*. at 1956.
9. The City Council reviewed the Parks Plan update on March 18, April 15, May 20, July 15, August 18, and November 25, 2008.[5] The City Council held public hearings on the Parks Plan on April 15 and July 15, 2008, receiving comment from 14 citizens on April 15 and 3 citizens on July 15. Petso Ex. 7, 9. Public comment was also taken at the May 20 and May 27 City Council meetings. Petso Ex. 8, 10.

[4] A complete copy is attached as Appendix C.

[5] Minutes of these meetings are at Index 2-B, 2-I, 2-R, 2-V, and 2-II.

10. Councilmember Bernheim offered a number of proposed amendments to the Parks Plan at the April 15, 2008, Council meeting. Petso Ex. 18. The amendments were discussed, but not voted on. At the July 15, 2008, Council meeting, after the public hearing, Councilmember Bernheim re-offered three of his proposed amendments to the Parks Plan. Petso Ex. 9, at 14-15. The amendments were voted on and approved.
11. On July 15, 2008, the City Council referred the Parks Plan as amended for further deliberation at the August 18 special Council workshop, resulting in final text changes submitted and approved at a November 25, 2008, Council meeting. City Ex. 2; Petso Ex. 17.
12. Edmonds City Council allows public comment at all of its general meetings. Only the meeting of August 18, 2008, was a Council workshop at which no public testimony was taken. HOM, at 72-73.
13. On December 16, 2008, the Council took a final vote on Ordinance 3717, adopting the 2008 Parks Plan unanimously. Resolution 1185, adopted concurrently, sets forth the findings in support of Ordinance 3717. City Ex. 1; HOM, at 50.

Further findings of fact are incorporated in the discussion and analysis which follows.

V. LEGAL ISSUES AND DISCUSSION

LEGAL ISSUE 1
Notice and Public Participation

The Prehearing Order states Legal Issue No. 1 as follows:

> *Legal Issue 1. Notice and Public Participation.* Did the City's adoption of the Parks Plan amendment [Ordinance 3717] fail to comply with the requirements of RCW 36.70A.010, RCW 36.70A.020(11), RCW 36.70A.035, RCW 36.70A.130, RCW 36.70A.140, Goal B.1 on page 3 of the General Comprehensive Plan, and, as applicable, WAC 305-195-600, and ECDC 20.00.010-050, as follows:
>
> > 1(a). Significant changes to the Park amendment were considered and adopted without providing an opportunity for public comment and without providing the additional information requested by council and the public.
> >
> > 1(b). The City has failed to either establish or broadly disseminate a public participation program providing early and continuous participation, and, to the extent any program exists, it was not followed for the Park amendment for reasons including failure to publish notice of the planning board hearing.
> >
> > 1(c). The City failed to provide meaningful (web input disregarded due to possibility of abuse) and fairly representative (composition of committee not representative of the community) public input into the development of the Park amendment.

Petitioner indicates that Issue 6(c) has reference to the public participation deficiencies identified under Legal Issue 1. Petso PHB, at 25. The Board includes Issue 6(c) here.

> 6(c). The Parks Plan was not correctly amended.

Applicable Law

RCW 36.70A.020(11) is the GMA planning goal for public participation and intergovernmental coordination:

> (11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

RCW 36.70A.035 sets forth the notice requirements for GMA public participation:

> The public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations of proposed amendments to comprehensive plans and development regulations. Examples of reasonable notice provisions include:
>
> a. Posting the property for site-specific proposals;
> b. Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located or that will be affected by the proposal;
> c. Notifying the public or private groups with known interest in a certain proposal or in the type of proposal being considered;
> d. Placing notices in appropriate regional, neighborhood, ethnic or trade journals; and
> e. Publishing notice in agency newsletters or sending notice to agency mailing lists, including general lists or lists for specific proposals or subject areas.

RCW 36.70A.140, the GMA's public participation requirement, provides in relevant part:

> [Each GMA planning jurisdiction] shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.

WAC 365-195-600 mirrors the requirements of RCW 36.70A.140 and provides various recommendations that jurisdictions may implement to satisfy these requirements.

RCW 36.70A.130(2) continues the GMA's emphasis on public participation as applied to plan updates, annual reviews and amendments to comprehensive plans, providing, in relevant part:

> [Each GMA planning jurisdiction] shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year.

RCW 36.70A.010 provides legislative findings for the GMA. As such, it does not provide the basis for a compliance challenge. This section of the Act indicates general legislative intent but does not create specific duties enforceable by this Board. *Litowitz, et al, v. City of Federal Way,* CPSGMHB Case No. 96-3-00005, Final Decision and Order (July 22, 1996), at 14.[6]

Discussion and Analysis

The Board, from its earliest cases, has stated that the GMA requires an "enhanced public participation" process and that public participation is the "bedrock of GMA planning." [7] As set forth above, the GMA contains specific provisions requiring citizen involvement in comprehensive land use planning – RCW 36.70A.020(11), .035, .140, and .130. With these sections of the GMA, the Legislature has specifically required jurisdictions to develop and amend their comprehensive plans according to procedures that require an enormous degree of public participation. *See 1000 Friends of Washington v. McFarland*, 159 Wn.2d 165 (En Banc 2006) (holding King County's critical areas ordinance was not subject to referendum, due in part to the extensive provisions for public participation found in the GMA).

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[6] *Litowitz*, at 14:

> RCW 36.70A.010 is not a substantive or even procedural requirement of the Act, and it creates no specific local government duty for compliance apart from the substantive goals and requirement of the Act.

See also, *WHIP II/Moyer v. City of Covington*, CPSGMHB 01-3-0026 and 03-3-0026, Final Decision and Order (July 31, 2003); *Tahoma Audubon Society v. Pierce County*, CPSGMHB 05-3-0004c, Final Decision and Order (July 12, 2005), at 18.

[7] *See Pirie v. City of Lynnwood*, CPSGMHB Case No. 06-3-0029, Final Decision and Order (Apr. 9, 2007), at 13-14; *McNaughton v. Snohomish County*, CPSGMHB Case No. 06-3-0027, Final Decision and Order, (Jan. 29, 2007), at 22; *Laurelhurst, et al v. City of Seattle*, CPSGMHB Case No. 03-3-0016, Final Decision and Order, (Mar. 3, 2004); *McVittie V v. Snohomish County*, CPSGMHB Case No. 00-3-0016, Final Decision and Order, (Apr. 12, 2001); *Poulsbo, et al v. Kitsap County*, CPSGMHB 92-3-0009c, Final Decision and Order, (Apr. 6, 1993); *Twin Falls, et al v. Snohomish County*, CPSGPHB Case No. 93-3-0003c, Final Decision and Order, (Sep. 7, 1993).

The Board's discussion that follows is organized around the questions highlighted in Petitioner's Prehearing Brief, rather than assigning each discussion to a particular sub-issue under Legal Issue 1. Findings of fact are incorporated in the discussion.

Established process for public participation. Has the City established and disseminated a process for notice and public participation in comprehensive plan amendments, as required by RCW 36.70A.140 and .130(2)?

Ms. Petso argues that the City has failed to establish a public participation procedure meeting the requirements of RCW 36.70A.140 and .130(2). Petso PHB, at 5-6.

The City of Edmonds's public participation program for comprehensive plan amendments is found in ECDC Chapter 20.00 – Changes to the Comprehensive Plan. The chapter requires publication and posting of notices, a public hearing before the Planning Board, and a public hearing before the City Council,[8] and sets deadlines for these procedures.

While the City has clearly adopted the required public participation process, this part of Petitioner's challenge appears to be a collateral attack on whether the adopted process complies with the GMA. As such, the challenge is untimely.[9] The Supreme Court has recently clarified that, in response to a comprehensive plan update, a petitioner may challenge only those provisions that were amended. *Thurston County v. Western Washington Growth Management Hearings Board*, 164 Wn.2d 329, 190 P3d 38 (2008). Thus, the Board cannot, in a present action, rule that a previously-unchallenged city adoption is non-compliant. The code provisions of ECDC 20.00 were adopted in 1996 under Ordinance 3076, according to the code footnotes, and were not amended by Ordinance 3717; the Board cannot now entertain a challenge to their terms.

The Board therefore finds no merit in Petitioner's allegation that the City has failed to adopt and disseminate a public participation program compliant with the GMA. This portion of Legal Issue 1(b) is **dismissed.**

Early participation. Did the City provide for "early … public participation" in developing and adopting the Parks Plan amendments?

Ms. Petso asserts that the City began its Parks Plan review in March 2007 but did not hold a public hearing until March 2008, thus violating the requirement for "early" public participation. Petso PHB, at 10.

The City points out that, in preparing to update its Parks Plan, the City of Edmonds went well beyond the notice and hearings required in ECDC 20.00. City Response, at 8-10.The City engaged a consultant to design and conduct an outreach program. Index 2-G.This program

[8] The procedure allows flexibility for additional Council meetings or hearings (ECDC 20.00.020), so City staff uncertainty about possible subsequent hearings is understandable. See, Petso PHB, at 6; Petso Ex. 5.

[9] See, *McVittie I v. Snohomish County*, CPSGMHB Case No. 99-3-0016c, Final Decision and Order (Feb. 9, 2000), at 15-17.

was adopted by the City Council on March 27, 2007, and disseminated on the City's website and Channel 21 TV and through public workshops on June 20 and September 16, 2007. City Ex. 3; City Ex. 6; HOM, at 64-65.

For the June 20, 2007 workshop, the City's press release stated: "The public is invited to attend a public open house and workshop to provide community input into the needs, future options, and comprehensive planning of all areas of the [Parks] Department." The June 20 meeting was characterized as a "public workshop" and the meeting materials instructed the facilitators to welcome all ideas. Index 2-UU.

The Board finds and concludes that the City provided "early" public participation in the Parks Plan amendments. This portion of Legal Issue 1(b) is **dismissed**.

Meaningful and representative participation. Did the City fail to provide meaningful (web input disregarded due to possibility of abuse) and fairly representative (composition of committee not representative of the community) public input into the development of the Park amendment?

Petitioner argues that City staff gave undue weight to recommendations of an unrepresentative appointed citizen committee and a skewed telephone survey. She states that the staff unfairly disregarded the results of the web survey. Petso PHB at 10-12.

The Board reads the record differently. As recommended by WAC 365-195-600(2)(a)(i), the City's Parks Plan amendment process reached out to the "broadest cross-section of the community, so that groups not previously involved in planning become involved." The program utilized a 22-member stakeholder committee[10] which met monthly from March to December 2007. Core G, at 1-2. The Board finds no merit in Petitioner's concern that the stakeholder committee was unrepresentative and included a non-resident of the City. The committee members "were selected due to the wide range and variety of their interests and backgrounds," not based on geographical representation.[11] The City is entitled to hear from persons and organizations with special insight or interest in parks, recreation, and open space, whether or not they live in the City. Selection of members of such an advisory committee is a matter within the discretion of the elected officials. See, e.g., *Fallgatter VI v. City of Sultan*, CPSGMHB Case No. 06-3-0017, Order on Motions (June 29, 2006), at 4-5 (composition of Planning Board).

The City's outreach program included telephone and web surveys. The results of both the telephone survey and the web survey were made available to the Advisory Committee, to interested Planning Board members, and to the City Council. Petso Ex. 12, at 1957; Petso Ex. 15. Each of these surveys had its strengths and its flaws, which were disclosed to the City

[10] The parks advisory group included representatives from Edmonds School District, Port of Edmonds, Adult Sports, Youth Sports, South County Senior Center, Edmonds Bicycle Group, Recreation Services, and other interests. Core G, at 1-2. In addition to the 22-member parks, recreation and open space advisory group, a 20-member cultural advisory committee was also convened.

[11] Resolution 1185, City Ex. 1, at 1949.

Council for its decision, as part of the staff report and citizen input. The telephone survey under-represented residents younger than 34 years of age and over-represented residents older than 50, compared to the demographics of the City. Petso Ex. 14. The web survey was open-ended with no way to control for multiple entries by the same person. See, Petso PHB, at 11-12.

Ms. Petso expressed her view of the telephone and web surveys in testimony to the City Council. Petso Ex. 16, April 15, 2008 minutes. The City Council discussed the age-bias in the telephone survey at length.[12] The meeting minutes of the various Council meetings show that *all* of the citizen input was disclosed to and openly critiqued by the City Council. Results of both surveys are included in the Parks Plan as Appendix B.

It is well-settled that the *weight* to be given to public input – whether the result of surveys, advisory committee recommendations, or citizen comments - is left to the discretion of the City Council.[13] The Board finds no merit in Ms. Petso's objection to the City's appointments to the advisory committee or to its consideration of web and telephone surveys. Legal Issue 1(c) is **dismissed.**

Notice provisions. Do the City's notice provisions provide notice distribution methods that are "reasonably calculated to provide notice"?

As recommended by WAC 365-195-600(2)(a)(ix), the City used a variety of distribution methods for notice of its Parks Plan amendment process. ECDC 20.00.020 and 1.03.030 require newspaper publication (*Everett Herald*)[14] and posting at three public locations. The Board notes that Edmonds's code requirement is minimal, but probably legally satisfies RCW 36.70A.035, which lists "publishing notice in a newspaper of general circulation" as an example of a "reasonable notice provision."[15]

RCW 36.70A.035 does not require that the local government use all of the listed methods for notice. The Board has consistently construed the provisions of .035 as setting out a menu of

[12] Petso Ex. 15, March 18, 2008 meeting, extensive City Council discussion of telephone survey, and Petso Ex. 16, April 15, 2008, Council discussion of validity of surveys.

[13] S*ee* e.g., *Seattle-King County Assoc. of Realtors v. King County*, CPSGMHB Case No. 04-3-0028, Final Decision and Order (May 31, 2005), at 9; and *Hood Canal Environmental Council, et al v. Kitsap County*, CPSGMHB 06-3-0012c, Final Decision and Order (Aug. 28, 2006), at 13-14.

[14] The Board officially notices the "notorious fact" that government agencies have traditionally been required to publish public notices in a designated newspaper. While legally sufficient, this may no longer be an effective means of informing the general public. The City of Edmonds is to be commended for recognizing the limitations of traditional publication and augmenting its legal notices with information on its website, public access TV, and by other means.

[15] Petitioner chastises the City for continuing to publish GMA notices in the *Everett Herald*. Petso PHB, at 14: "If the public forgets to read the *Everett Herald* legal notices … even one day, their opportunity for public participation … may be lost"; Petso Reply, at 7: "Edmonds hides its notice of public hearings in the legal classifieds of the *Everett Herald;"* Petso Reply, at 8: *"*Our public notices are hidden in the legal classifieds of the *Everett Herald.*"

options from which a jurisdiction may choose. See, *Pirie v. Lynnwood*, CPSGMHB Case No. 06-3-0029, Final Decision and Order (Apr. 9, 2007), at 17, fn. 6.

The Supreme Court addressed the issue in *Chevron USA, Inc. v. Central Puget Sound Growth Management Hearings Board*, 156 Wn.2d 131, 137, 124 P3d 640 (2005), saying that RCW 36.70A.035(1) lists publication in a newspaper of general circulation as an example of reasonable notice. The Court stated that the Town of Woodway, by publishing notice in the *Everett Herald*, complied with the explicit notice provisions of the GMA. *Id*. Thus, the Court has held that compliance with just one example of reasonable notice is adequate to demonstrate compliance with the GMA notice requirements.

Nevertheless, for the Parks Plan update, the City of Edmonds augmented the required newspaper notices and postings:

> [N]otice was provided through a press release in 5 newspapers, distribution of a public service announcement to the Chamber of Commerce, a direct mailing to approximately 200 members of City boards and commissions and parks department patrons … and a notice in the spring Arts Bulletin to 1400 citizens.

City Response, at 9; City Ex. 5. The City also used postings on its website, announcements on Channel 21 TV, and a sign-up system for citizens who wished further individual mailed notices. City Response, at 10; HOM, at 65.

The Board finds no error here in the City's methods of notice distribution.[16] This portion of the allegations under Legal Issue 1 is **dismissed.**

Effective notice. Did the City's notices provide sufficient information to apprise citizens of the matters being considered?

RCW 36.70A.140 states that the procedures for public participation in comprehensive plan amendments "shall provide for … public meetings after *effective notice*." RCW 36.70A.035 states: "The public participation requirements of this chapter shall include *notice reasonably calculated to provide notice ... of proposed amendments* to comprehensive plans." (Emphasis supplied.)

Ms. Petso contends that the City's notices were ineffective because they failed to alert the public to the matters under consideration. Petso PHB, at 8. She asserts that the City's legal notices simply referred to the Parks Plan, or, at most, the Parks Plan "update," and provided no information on significant policy changes being contemplated by City staff:

> Each notice failed to advise the public of the reductions in level of service, of the redesignation of the Sherwood Park playfields, and of the fact that the plan would be updated or amended.

[16] At some future plan update, the City may wish to update ECDC 20.00.020 and 1.03.30 to better reflect its current practice of broader methods of notice distribution.

Id. at 8.

The City responds that the public was fully aware that the Parks Plan was being updated, and that, under the GMA, "update means to review and revise." City Response, at 15, citing RCW 36.70A.130(2)(a). In particular, the City contends that the Board's cases requiring specific notice of LOS changes are directed at local concurrency provisions, which have "profound impact on property rights." In the Edmonds Parks Plan, by contrast, the City uses LOS as a way "to help assess need," without regulatory or concurrency implications that would necessitate more explicit notice. *Id.*

This Board has long held that the requirement of "effective notice" includes not just the *distribution* of notice but its *content*. See, e.g., *Homebuilders Association of Kitsap County v. Bainbridge Island,* CPSGMHB Case No. 00-3-0014, Final Decision and Order (Feb. 26, 2001), at 10-11. In the City's record, the Board finds multiple notices of the Parks Plan process, but, except for more detailed press releases and publications, the notices simply announce meetings "on" the Parks Plan or, perhaps, on the Parks Plan "update."

In the Board's view:

> A notice that is reasonably calculated to reach the intended public … must also be measured against whether it is effective in alerting the public to the key questions in play.

McVittie VI v. Snohomish County, CPSGMHB Case No. 01-3-0002, Final Decision and Order (July 25, 2001), at 6. In *McVittie VI*, the County provided general notice that it was amending its CFP, without indicating that it was changing the way it measured levels of service for its parks and recreation facilities. The Board found the County's notice non-compliant.

In *Orton Farms, et al. v. Pierce County*, CPSGMHB Case No. 04-3-0007c, Final Decision and Order (Aug. 2, 2004), at 15-16, the Board found Pierce County's notice of amendments to its agricultural designations non-compliant because "the general nature or magnitude of the proposed amendments is not described."

The Board recognizes that the Edmonds Parks Plan update involved many changes, some of which were not apparent prior to the 2007 workshops and advisory committee process. However, by the time notice was required for the Planning Board and City Council public hearings in 2008, the primary proposed revisions had been framed. A few of these were site specific;[17] others were more general.[18] Ms. Petso's pleadings focus on only a few aspects of the Plan, and the Board is not fully aware of other amendments that might have been highlighted for public attention. However, the Board does not construe its *McVittie VI* and

[17] For example: add skateboard facility at City Center Park; develop neighborhood park at Old Woodway Elementary site; expand Downtown Waterfront Activity Center.

[18] For example: incorporate trails and bikeway plan; recalculate needs assessment, generally reducing LOS; prioritize waterfront opportunities.

Orton Farms decisions as creating "bright line" rules; rather "the general nature or magnitude of the proposed amendments" must be described.

The Board commends the City on its early outreach program for the Parks Plan update. The City cast a broad net through the diverse stakeholders group, telephone survey, web survey and workshops. Once that early input was compiled and the proposal was scheduled for public hearings, "effective notice" should have "alerted the public to the key questions in play." *McVittie VI*, at 6. Mere announcement that the Parks Plan amendments or Parks Plan update was on the agenda was insufficient.[19] The Board is "left with a definite and firm conviction that a mistake has been made."

The Board finds and concludes that the City **failed to comply** with RCW 36.70A.035 and .140 by failing to provide effective notice of the amendments under consideration. The Board will **remand** Ordinance 3717 to the City for reconsideration following a public hearing with notice.

Dissemination of alternatives. Did the City's procedure "provide for broad dissemination of proposals and alternatives" as required by RCW 36.70A.140?

Ms. Petso argues that the City staff failed to provide the City Council and interested citizens with the "alternatives" required by RCW 36.70A.140 because the City staff never produced a concise comparison of the 2001 Parks Plan and the proposed 2008 amendments. Petso PHB, at 7. Such a comparison was requested by a member of the Planning Board, by Councilmembers Wilson and Dawson at the Council retreat, and by several citizens.[20] In her testimony on May 27, 2008, and in her written comments, Ms. Petso herself provided the City Council with a chart of some of the differences between the two versions. Petso Ex. 10.

RCW 36.70A.140 requires: "the procedures shall provide for broad dissemination of proposals and alternatives…" No particular form is prescribed for "alternatives." The City of Edmonds contends that, because the Parks Plan update rewrote the Plan "from the bottom up," no tidy comparison of differences was appropriate or necessary. HOM Transcript, at 76-77.

Here, the City of Edmonds made both the 2001 Parks Plan (no-action alternative) and the proposed 2008 Parks Plan update available on the City website. The various options were

[19] The City cites Board decisions stating that a jurisdiction need not start its process over again when changes are made to a proposal under consideration. HOM, at 65-66. In each of those cases, the *notices* for public hearings and actions in the latter part of the decision process in fact indicated the proposed changes. The question the Board addressed was whether the jurisdiction needed to go back and re-start its EIS or community advisory or docketing processes. *North Everett Neighbor Alliance v. City of Everett*, CPSGMHB Case No. 08-3-0005, Final Decision and Order (Apr. 28, 2009); *Halmo v. Pierce County*, CPSGMHB Case No. 07-3-0004c, Final Decision and Order (Sep. 28, 2007); *Cave/Cowan v. City of Renton*, CPSGMHB Case No. 07-3-0012, Final Decision and Order (July 30, 2007).

[20] Petso Ex. 6, Planning Board minutes Nov. 28, 2007; Petso Ex. 1, Council workshop Aug. 18, 2008; Petso Reply, at 2.

discussed in at least three public meetings of the Planning Board and five open public meetings of the City Council.[21] The Board notes, for example, the on-going discussion of "level-of-service" standards, where a range of alternative solutions were proposed, compared, subject to public testimony, and debated by the City Council.[22]

ECDC Chapter 20.00 doesn't require that alternatives be distributed in hard copy, rather than electronically, or that side-by-side comparisons be drawn up by staff. However helpful such provisions might be, they are not requirements of the statute. [23] By unanimously approving the Plan, Planning Board members and City Council members presumptively indicated that they had received the information required for their decision.

The Board concludes that Petitioner has not carried her burden of demonstrating that the City's procedure for dissemination of proposals and alternatives was non-compliant with RCW 36.70A.140.[24] This portion of the allegations under Legal Issue 1 is **dismissed.**

Consideration of public comments. Does the City's procedure provide "opportunity for written comment, … provision for open discussion, … and consideration of and response to public comments" as required by RCW 36.70A.140?

Petitioner Petso asserts that the City has failed to comply with .140, stating that the City staff or Council's response to a number of her specific comments, written or oral, was not "an interactive dialogue." Petso PHB, at 12, citing *Sky Valley v. Snohomish County*, CPSGMHB Case No. 95-3-0068c, Final Decision and Order (March 12, 1996) at 34.

Ms. Petso acknowledges that she was asked to submit comments in writing. Petso PHB, at 12. City staff then provided the City Council with its responses to two sets of written comments from Ms. Petso, dated April 15, 2008 and May 2, 2008. Petso PHB, Ex. 12. Based on Ms. Petso's comments, City staff made several revisions to the proposed Parks Plan, highlighting those revisions in subsequent copies of the Plan provided to City Council. *Id.* at 1956. These revisions added/corrected references to Old Woodway Elementary and 162nd Park, corrected population numbers and mathematical errors, recharacterized city-owned soccer and softball fields as meeting "practice field" rather than "regulation" standards, and included the

[21] See Findings of Fact 7 and 9, *supra.*

[22] Petso Ex. 5 and 19, May 20, 2008 Council meeting; Petso Ex. 9 and 13, July 15, 2008 public hearing and Council meeting.

[23] Ms. Petso cites to Ms. McVittie's argument, quoted in *McVittie VI v. Snohomish County*, CPSGMHB Case No. 01-3-0002, Final Decision and Order (July 25, 2001), at 7. Ms. McVittie said: "It is true that the information [of the proposed change] could be obtained by reviewing the CFP and obtaining all the previous CFPs and the Henderson Young Report and carefully comparing the documents … [however] the public should not be expected to expend these heroic levels of energy just to understand what the County is intending to do." The Board in that case did not require side-by-side comparisons. *Id*. at 10.

[24] While the Board does not find a violation of the GMA on this point, the Board's remand of Ordinance 3717 for reconsideration after effective notice affords the City an opportunity to provide citizens with a more user-friendly comparison of the 2001 Parks Plan and the 2008 update.

Esperance area. Ms. Petso asserts that "there was no open discussion of the staff response" to her concerns. Petso PHB, at 12.

The Board has previously explained that "consideration and response to public comment" does not require that the government provide an answer to every question or concern raised by participants. A similar objection was raised in a challenge to King County's update of its critical areas regulations: *Maxine Keesling v. King County*, CPSGMHB Case No. 05-3-0001, Final Decision and Order (July 5, 2005). Ms. Keesling attended numerous public meetings leading up to King County's adoption of its CAO and submitted comments and critiques, including materials calling into question the science relied on by the County. King County's record included the materials submitted by Ms. Keesling, summaries of her comments in public meetings, and staff notes responding to her issues. Nevertheless, Ms. Keesling alleged a failure to comply with GMA public participation requirements because "there was no county response and no apparent consideration given to Petitioner's suggestion." *Id.* at 5. The Board rejected Ms. Keesling's public process challenge, stating: "The GMA imposes no duty on jurisdictions to respond to specific citizen comments in the public process…."[25] *Id.* at 14. Thus, "response to public comments" does not mean that each participant's question must be specifically answered, but rather, the jurisdiction must take citizen input into consideration in its decision-making.

In the present matter, it is apparent from the City's record that Ms. Petso's comments (and those of other participants) were considered and analyzed by City staff and City Council, although they were not given the weight to which Ms. Petso believes they were entitled. The Board finds that Ms. Petso's comments and concerns were discussed by the City Council at several of their meetings.[26] With respect to comments of other members of the public, "staff followed up on questions from public testimony and submissions." City Ex. 8, at 14.

In sum, the record of this matter demonstrates that the City included and considered public input in various phases of the development of the 2008 Parks Plan. This consideration

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[25] Citing, *MacAngus Ranches, Michael Leung and Dennis Daley v. Snohomish County,* CPSGMHB No. 99-3-0017, Final Decision and Order, (March 23, 2000), at 12 (Holding that "Respond to" public comments does not mean that counties and cities must react in response to all citizen questions or comments… It means only that citizen comments and questions must be considered…); See *Montlake Community Club v. City of Seattle,* CPSGMHB No. 99-3-0002c, Final Decision and Order, (July 30, 1999), at 9 (Petitioner's arguments regarding public participation amounted to a disagreement with the City over the policy choices made by the City Council. Petitioner's dissatisfaction with the decision made by the City does not mean that the public participation process used by the City…failed to comply with the requirements of RCW 36.70A.140).

[26] May 20, 2008 Council meeting minutes, City Ex. 8, at 16: "Councilmember Wilson understood Ms. Petso's comments that there had been a decrease in park inventory."

July 15, 2008, Council meeting minutes, City Ex. 2, at 12-13: "Council President Plunkett asked Mr. McIntosh to address Ms. Petso's comments regarding park level of service." "Councilmember Dawson asked staff to respond to Ms. Petso's comments regarding the adult-sized soccer fields." "Councilmember Wambolt referred to Ms. Petso's comment about REET funds."

August 18, 2008, special Council workshop minutes, Petso Ex. 1, at 6. "Concern many of Lora Petso's criticisms had not been rebutted."

included a broad range of surveys and meetings in which interested parties, including the Petitioner, had the opportunity to voice their opinions to the City's representatives and elected officials. Both the Petitioner and others testified before the Planning Board and the City Council, and submitted written comments. The record clearly demonstrates that there was an abundance of public input into the Parks Plan and that the City Council and staff expressly considered citizen opinions in their deliberations.

In a recent decision, the Board reasoned:

> In reviewing the lengthy record of the public process in this matter, the Board is not persuaded that GMA public participation requirements were violated. There were errors in the procedure; however, the City clearly notified its citizens, listened to their concerns, and provided opportunities for public input. The lengthy City Council meeting transcripts demonstrate that City Council members genuinely understood the concerns raised by residents on both sides of the dispute and that their decision in adopting the Ordinance was informed by the public process.

North Everett Neighbor Alliance v. City of Everett, CPSGMHB Case No. 08-3-0005, Final Decision and Order (Apr. 28, 2009), at 20.

Here the record reflects that the Council members understood the concerns raised by Ms. Petso and others and that their decision was informed by the public process. The Board concludes that Petitioner **has not met her burden of demonstrating non-compliance** with the RCW 36.70A.140 requirement for open discussion and consideration and response to public comments. This portion of the allegations under Legal Issue 1 is **dismissed.**

Late amendments. Were significant changes to the Parks Plan considered and adopted without providing an opportunity for public comment and without providing the additional information requested by council and the public?

Petitioner contends that public participation was not "continuous" in that the City adopted amendments to the Parks Plan after the close of the July 15, 2008 public hearing. She cites the Board's ruling that "when a change is proposed to an amendment to a comprehensive plan, the public must have an opportunity to review and comment on the proposed change before the legislative body votes on the proposed change." *Andrus v. City of Bainbridge Island*, CPSGMHB Case No. 98-3-0030, Final Decision and Order (June 31, 1999). Petso PHB, at 13. Ms. Petso identifies three sets of amendments to the Parks Plan proposal as violating this rule:

- Bernheim amendments adopted by City Council on July 15, 2008, after the close of the public hearing;
- November 25, 2008 amendments;
- Findings adopted December 16, 2008, on final passage of the Ordinance.

RCW 36.70A.035(2) specifically addresses the requirements for public review of changes to a comprehensive plan amendment introduced *after* public comment is closed. RCW 36.70A.035(2) provides:

> (a) Except as otherwise provided in (b) of this subsection, if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change.
>
> (b) An additional opportunity for public review and comment is not required under (a) of this subsection if:
>
> ….
>
> (ii) The proposed change is within the scope of the alternatives available for public comment;
>
> (iii) The proposed change … clarifies language of a proposed ordinance or resolution without changing its effect; ….

In *Burrows v Kitsap County*, CPSGMHB Case No. 99-3-0018, Final Decision and Order (March 29, 2000), at 10, the Board explained why amendments within the scope of alternatives are allowed:

> [I]f the public had the opportunity to review and comment on the changes to the proposed amendments, then the [city] is not required to provide an additional opportunity for public participation. There is no GMA requirement that the [city] must have prepared a document for public inspection specifically proposing all elements of the amendments ultimately adopted by the [city]…

The Board notes, at the outset, that the Edmonds City Council did not take final action on the Parks Plan update until December 16, 2008. City Ex. 1. The Edmonds City Council allows citizen input at all its public meetings, whether or not a matter is on its agenda. HOM, at 72-73. Thus interested citizens had a continuing opportunity to comment on the July 20 and November 25 amendments.[27] Nevertheless, the Board will review each set of amendments in light of the standards of RCW 36.70A.035(2).

Bernheim Amendments July 20, 2008

Petitioner objects to three amendments first offered by Councilmember Bernheim on April 15, 2008, and voted on by the City Council on July 15, 2008. Petso Ex. 9, July 15, 2008 minutes at 14-16. At the Council meeting on April 15, Councilmember Bernheim presented a set of

[27] See, *Halmo v. Pierce County*, CPSGMHB Case No. 07-3-0004c, Final Decision and Order (Sep. 28, 2007), at 12-13, and 26: "The County Council accepted written and emailed comments until the day the plan was adopted."

seven Parks Plan amendments relating to the Downtown Waterfront Activity Center (**DWAC**). Petso Ex. 18. Support for the DWAC had been expressed by citizens who testified that evening at the City Council's public hearing. Petso Ex. 16 (Larry Pauls, Jan Kavadas, Dick Van Hollebeke). The text of the proposed amendments, which included a map amendment to designate the DWAC with a "purple starburst," was made available to the public in the approved minutes of that meeting. Petso Ex. 18.

At the May 20, 2008 Council meeting, when conceptual approval of the Parks Plan was brought to a vote (for purposes of grant application), Councilmember Bernheim brought forward one of his amendments, recommending provision of regional facilities "within the DWAC." That amendment was adopted. Petso Ex. 19. However, Councilmember Bernheim's amendment to designate the DWAC with a purple starburst representing a proposed regional/community park was discussed and withdrawn.

Then, at the July 15 Council meeting, following the second public hearing on the plan, three of Councilmember Bernheim's DWAC amendments were adopted by the City Council. Those three amendments, the City states, (a) moved a clause from one part of a sentence to another, (b) changed "waterfront" to "Downtown Waterfront Activity Center," and (c) designated the proposed regional park with a purple starburst. HOM, at 51; City Response, at 13-14.

Thus, contrary to Ms. Petso's recollection, the City's record demonstrates that Councilmember Bernheim's various amendments concerning the DWAC were presented in at least two open public meetings of the City Council prior to the July 15 public hearing and Council adoption. By contrast, in *Lewis v City of Edgewood,* CPSGMHB Case No. 01-3-0020, Final Decision and Order (Feb. 7, 2002), at 6-10, final drafts of 14 amendments totaling 38 pages were not available until the Council meeting at which the comprehensive plan was adopted.

The Board finds that the Bernheim amendments were "within the scope of alternatives available for public comment" and therefore fell within the exception of RCW 36.70A.035(2)(b)(ii).

November 25, 2008, Amendments

At the November 25, 2008 Council meeting, the City Council again reviewed amendments to the draft Parks Plan.[28] According to the Council meeting minutes, Parks Director McIntosh

[28] In an early case decided before legislative enactment of RCW 36.70A.035(2), the Board rejected a citizen challenge to a series of comprehensive plan amendments enacted by the County Council during its 5-month deliberation *after* the close of public testimony. *Sky Valley v. Snohomish County*, CPSGMHB Case No. 95-3-0068c, Final Decision and Order (March 12, 1996) at 28-36. The Board held that the County Council's deliberation and decisions after the close of the record did not violate the "continuous" element, in that their decisions were within the scope of matters that had been discussed in the public process.

Similarly, in the present case, the Edmonds City Council continued to deliberate after the July 15 public hearing. At the July meeting, the Council members agreed to continue deliberation at their August Council workshop, to be followed by final decisions and vote at the end of the year. City Ex. 2, at 16. In particular, "further Council discussion regarding level of service as well as more ambitious goals in the Parks Plan" was called for. *Id.* The

introduced two amendments. The first was to incorporate National Recreation and Park Association (NPRA) standards as aspirational goals "in response to the council's desire to ensure that the Plan not be any less ambitious than the previous Plan." Petso Ex. 17. The second was to list, in the Funding Plan section, examples of capital and acquisition projects that could be funded with voter-approved general obligation bonds. *Id.* Ms. Petso objects that these were substantive amendments which required public comment. Petso PHB, at 14.

Aspirational Goals. Additional public comment is not required if "the proposed change is within the scope of the alternatives available for public comment." RCW 36.70A.035(2)(b)(ii). The Board understands from the record that the national standards were already included in Table 4.2 "Level of Service by Facility Type Existing and Proposed," of the draft 2008 Parks Plan. The November 25 amendment added this explanatory language below the Table:

> The Parks Department and Council recognize that the current financial constraints of traditional funding sources limit park acquisition, improvement and maintenance to levels below the aspirational goals of the City reflected in the National Recreation and Park Association (NRPA) recommended standards. These aspirational standards reflect the long term goals through the use of grants, bonds, voter-approved funding or other enhancements to the City's traditional revenue base through changes in state law.

The record indicates that levels of service had been discussed by the City Council at its May 20, 2008 meeting, where both Councilmembers Bernheim and Wilson expressed an aspirational goal to meet the national standards. City Ex. 8, at 15-16. Further discussions of level-of-service standards followed in public input, testimony, and Council discussion at the July 15 public hearing and Council meeting (City Ex. 2, at 12-13, 16) and at the August 18 Special Council Workshop (Petso Ex. 1), with national standards as a reference point. The Board finds and concludes that the Council's action amending the proposed Parks Plan to recognize the NPRA standards as "aspirational goals" was well within the scope of alternatives that had been available for public comment.

General Obligation Bond. Additional public comment is not required if the proposed change "clarifies language of a proposed ordinance or resolution without changing its effect." RCW 36.70A.035(2)(b)(iii). The second November 25 amendment was in the Funding Plan section where 21 possible sources for parks funding are briefly identified. Core G, Chapter 7. Here, the Planning Director proposed to include under "General Obligation Bond" a list of six Edmonds projects that would be eligible for voter-approved funding. Core G, at 7-2.[29] The text is clear that these are potentially-eligible projects, not recommendations or commitments.

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amendments adopted as a result of this deliberation must now be reviewed under the criteria of RCW 36.70A.035(2)(b).

[29] The six examples are: former Woodway High School playfield development, Senior Center redevelopment, Aquatics Center, Civic Center playfield acquisition, citywide sidewalk and trail connections, 4th Avenue Cultural Corridor.

The Board fails to see how adding examples of eligible projects changes the effect of the ordinance. Absent a plan or commitment to fund any of the six projects through a ballot measure, this list of examples does no more than "clarify the language" of the proposed ordinance.

The Board finds and concludes that the November 25, 2008 amendments fell within the exceptions of RCW 36.70A.035(2)(b).

December 16, 2008 Findings and Conclusions

Findings were added to Ordinance No. 3717 on December 16, 2008, prior to final adoption.[30] Ms. Petso objects that there was no opportunity for public comment and not even any Council "deliberation" on these findings. Petso PHB, at 14; HOM at 37-38. The City responds that findings are necessarily added to ordinances after the City Council has completed public testimony and deliberation. HOM, at 74.

The Board dealt with a similar objection to findings in *Halmo v. Pierce County*, CPSGMHB Case No. 07-3-0004c, Final Decision and Order (Sep. 28, 2007), at 26:

> CROWD makes much of the fact that the County Council did not insert 'findings' concerning the landfill into its ordinance until the end of the process. The Board understands that an elected body may need to hear and deliberate on a whole range of facts before adopting findings….

The Board ruled that the findings in the *Halmo* case were within the provision of RCW 36.70A.035(2)(b)(iii): "The proposed change … clarifies language of a proposed ordinance or resolution without changing its effect." By definition, the findings section of an ordinance is a clarification, not a substantive change.

The Board concludes that the findings in Edmonds Resolution 1185 simply clarified the ordinance "without changing its effect." Key findings sought to clarify the relationship between the City's aspirational goals and its level of service standards:

> Whereas, the City recognizes the need for and distinction between long range aspirational goals and operational level of service standards for its parks system and adopts both in its Parks Plan update …
>
> The City Council finds that the proposed plan updates represent both the City's current operational level of service standards achievable within current budget limitations as well as acknowledging and recognizing long-range aspirational goals and levels of service, which, as funding becomes available, the City Council will attempt to meet.

City Ex. 1, at 1950.

[30] City Ex. 1 attaches Resolution 1185 containing the findings.

The fact that these findings were included in the Edmonds Parks Plan Ordinance on a consent agenda does not change the Board's analysis. At the Edmonds City Council meeting of December 16, 2008, any Council member who believed the findings drafted by staff did not accurately reflect the Council's deliberations had the option of requesting that the Ordinance be pulled from the consent agenda for further discussion or even of voting "no" on the Ordinance.[31]

The Board finds no merit in Petitioner's objection to the City's late consideration of findings for the 2008 Parks Plan ordinance. Petitioner has not carried her burden of demonstrating that any of the changes to the Parks Plan were adopted in violation of RCW 36.70A.035(2) or that the City failed to provide "continuous" public participation. Legal Issue 1(a) is **dismissed.**[32]

Conclusions – Legal Issue 1

The Board finds and concludes that the City failed to provide effective notice for public participation in its Parks Plan update process in that its notices lacked information to alert the public to the general nature or key questions of the proposed changes to the Parks Plan. In this respect, the City's adoption of Ordinance 3717 **did not comply** with RCW 36.70A.035 and .140. The Board **remands** Ordinance 3717 to the City for reconsideration after a public hearing with effective notice.

The Board finds and concludes that the City's adoption of Ordinance 3717 otherwise **complied** with the notice and public participation requirements of RCW 36.70A.035, .130, and .140, and **followed** the City's code procedures in ECDC 20.00.010-050, as follows:

a. The City has established a public participation program for comprehensive plan amendments;
b. the City provided for early and continuous public participation, and
c. the City's procedures allowed written comment, open discussion, and consideration and response to public comments.

The Board finds and concludes that the City **was guided by** GMA Planning Goal 11 in that the City "encouraged the involvement of citizens in the planning process."

Petitioner **did not carry her burden** of demonstrating that the City's methods of notice, dissemination of alternatives, weight given to citizen input, or adoption of "late" amendments were non-compliant with the requirements of the statute. Sub-issues (a), (b), and (c) of Legal Issue 1 are **dismissed.**

LEGAL ISSUE 2
Once-Per-Year Amendment

[31] Earlier insertion of findings would be more respectful of City Council members' need for review time.
[32] Ms. Petso's substantive objection to Finding 1.C concerning maintaining the land use balance will be dealt with more fully under Issue 3(g) below.

The Prehearing Order states Legal Issue No. 2 as follows:

> *Legal Issue 2. Once-per-year Amendment.* Did the City's adoption of the Parks Plan amendment fail to comply with the requirements of RCW 36.70A.130(2), RCW 36.70A.010, RCW 36.70A.020(11), RCW 36.70A.035, RCW 36.70A.140, Goal B.1 on page 3 of the General Comprehensive Plan, WAC 305-195-630, and ECDC 20.00.010 in that proposed plan amendments were considered more than once per year, and were not considered concurrently so that cumulative effects could be ascertained and the integrity of the comprehensive plan preserved?

Applicable Law

RCW 36.70A.130(2)(a) requires a city or county to identify procedures and schedules whereby updates and amendments to comprehensive plans are considered no more frequently than once per year.

> (2)(a). Each county and city shall establish and broadly disseminate to the public a public participation program … that identifies procedures and schedules whereby updates, proposed amendments, or revisions to the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. …
>
> (b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. …

Discussion and Analysis

The City of Edmonds has in fact adopted a program for comprehensive plan amendments which Petitioner Petso argues is insufficient. EDCD Chapter 20.00 sets out an annual process requiring notice published in the *Everett Herald* and posted in various public places, one public hearing before the Planning Board, one public hearing before the City Council, and deadlines for scheduling such hearings. ECDC 20.00.040 requires such changes to be adopted by ordinance, and ECDC 20.00.010 provides that the proposed ordinances are considered concurrently.[33]

The City states that its comprehensive plan amendment process allows for consideration of various applications individually, with preliminary decisions during the year, culminating in adoption of various comprehensive plan amendments by ordinance at year's end. "Preliminary approval is given at various stages in order to have final drafts available for consideration in conjunction with each other." City Response, at 19-20.

[33] ECDC 20.00.010: "In order to meet the requirements of the [GMA], the city shall undertake comprehensive plan amendments only once per year. All amendments requested by the city or private parties shall be reviewed concurrently to ensure that the integrity of the comprehensive plan is preserved."

During 2008, the City of Edmonds considered and gave preliminary approval to a private amendment for the Underhill project, which was readopted by Ordinance on December 16, 2008. Petso Ex. 19. Edmonds considered and rejected two other private amendments during 2008 – site-specific rezone requests for the Zammit/HAD and Gilett/Shapiro properties on July 1 and July 29 respectively. Petso PHB, at 15-16. Having decided to deny these rezones, was the City obligated to package those *denials* for concurrent decision with the Parks Plan amendment and Underhill rezone at the end of the year?

Petitioner argues that the City Council should have had *all* the proposed comprehensive plan amendments before it in December, including the two private amendments that were rejected in July, in order to ascertain the cumulative effect of the proposals. Petso PHB, at 16.[34]

The Board is not persuaded. In prior cases, the Board has held that *denial* of a docket request or private comprehensive plan amendment is not appealable under the GMA. It is well settled that, in the absence of an intervening legislative mandate, a jurisdiction's decision *not* to amend its adopted plans or development regulations is generally not subject to GMA procedures or challenges.[35] Thus, Edmonds's mid-year decisions *not to amend* need not be re-packaged with proposed amendments in an annual adoption cycle. As the Board noted in *SR2/US2 II v. Snohomish County*, CPSGMHB Case No. 08-3-0004, Order of Dismissal (Apr. 19, 2009), at 5:

> A decision not to docket a proposal for further consideration does not result in an amendment to a plan…. There is no evidence that the County has a duty to amend its plan to address … the proposal.

The annual concurrent review of "the cumulative effect of the various proposals" necessarily looks at the impact of potential *changes* to the comprehensive plan and may appropriately disregard denials that simply preserve the status quo.

In the present case, the City's December 2008 agenda gave the Council its once-a-year opportunity to determine the cumulative effect of approval of the Underhill rezone and of the

[34] Citing, *Buckles v. King County*, CPSGMHB Case No. 96-3-0022c, Final Decision and Order (Nov. 12, 1996), at 19; *WRECO v. City of Dupont*, CPSGMHB Case No. 98-3-0035, Final Decision and Order (May 19, 1999), at 9.

[35] See, *Orchard Beach v. City of Fircrest,* CPSGMHB Case No. 06-3-0019, Order of Dismissal (July 6, 2006), at 5; *Port of Seattle v City of Des Moines,* CPSGMHB Case No. 97-3-0014, Final Decision and Order (Aug. 13, 1999), at 8; *AFT II v Snohomish County*, CPSGMHB Case No. 99-3-0004, Order on Dispositive Motion (June 18, 1999), at 4; *Cole v Pierce County*, CPSGMHB Case No. 96-3-0009c, Final Decision and Order (July 31, 1996), at 21; *Tacoma II v Pierce County*, CPSGMHB Case No. 99-3-0023c, Order on Dispositive Motion (Mar. 10, 2000), at 2; *Harvey Airfield v. Snohomish County*, CPSGMHB Case No. 00-3-0008, Order on Dispositive Motion (July 13, 2000), at 3-4; *Bidwell v City of Bellevue*, CPSGMHB Case No.00-3-0009, Order on Dispositive Motion (July 14, 2000), at 3-4.

Parks Plan amendment. The City had no duty to reconsider the denied amendments at that time. The Board finds no violation of RCW 36.70A.130(2).[36]

Conclusion – Legal Issue 2

The Board finds and concludes that Petitioner has **failed to carry her burden** of demonstrating non-compliance with RCW 36.70A.130(2)(a). Legal Issue 2 is **dismissed.**

LEGAL ISSUE 3
Consistency

The Prehearing Order states Legal Issue No. 3 as follows:

> *Legal Issue 3. Inconsistency.* Is the Parks Plan amendment inconsistent with the GMA, the General Comprehensive Plan and the CFP, and internally inconsistent, in violation of RCW 36.70A.010, RCW 36.70A.070 (preamble), RCW 36.70A.070(8), RCW 36.70A.110(2), RCW 36.70A.130, WAC 365-195-070, -500, and ECDC 20.00.050(A), as follows:
>
> > 3(a). The Park amendment does not use the same population projections or the same park acreage as the General Plan and CFP.
> >
> > 3(b). The CFP specifically illustrates the playfield at Sherwood Park as an interlocal project to be funded in the CFP, but the Park amendment has dropped reference to the ILA's for park use at Sherwood Park, does not include Sherwood Park as a Park on the Park map, and omits the playfields at Sherwood Park from the field inventory.
> >
> > 3(c). The Park amendment does not include the same projects or calendar years as the CFP and is internally inconsistent regarding funding.
> >
> > 3(d). Park needs are identified, significant funding is identified and available, but the Parks Plan fails to identify planned acquisitions which would address identified park needs.
> >
> > 3(e). Language was added to the Park amendment to suggest that funding is not available, when, in fact, significant funding is available, particularly for park improvement.
> >
> > 3(f). The Park amendment was not current when adopted since the plan was adopted in late 2008 but contains a funding plan dating back to 2007 and 2008, and the plan expressly admits that population numbers were deliberately not updated.

[36] In this matter, as with notice and public process, an update of the City's regulations could provide more clarity.

3(g). The Park amendment fails to apply EDCD 20.00.050 or meet the standards contained therein.

3(h).The Park amendment maps do not include the Esperance UGA, and the amendment is inconsistent with purpose E on page 1 of the General Plan, effect B on page 2 of the General Plan, LOS goals on page 85 of the General Plan, and concurrency goal A.2. on page 88 of the General Plan.

Applicable Law

RCW 36.70A.070 (preamble) provides, in part: "The comprehensive plan … shall be an internally consistent document and all elements shall be consistent with the future land use map."

RCW 36.70A.070(8) requires, as a mandatory element of a local comprehensive plan, a "park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities."

ECDC 20.00.050(A) provides that "amendments to the comprehensive plan may be adopted only if … the proposed amendment is consistent with the provisions of the Edmonds Comprehensive Plan…."

Discussion and Analysis

Ms. Petso asserts a number of inconsistencies internal to the 2008 Parks Plan update, as well as inconsistencies between the 2008 Parks Plan and other components of Edmonds' Comprehensive Plan, including the capital facilities element. The Board addresses specific assertions by topic, generally following the order in Petitioner's Prehearing Brief.

Issue 3(a) - Population

Petitioner asserts that the population numbers in the updated Parks Plan are inconsistent with the numbers in the Comprehensive Plan. She identifies a 29-person discrepancy between the 2000 population of 39,515 in the comprehensive plan and 39,544 from OFM. Second, she notes an annual growth projection rate of .5% in the comprehensive plan and a rate of 1% in the updated Parks Plan. Third, she finds no basis for the reduction of population in the Esperance UGA (comparing 2001 and 2008 Parks Plans). Petso PHB, at 17-18.

The Board notes that 20-year population growth targets for counties are established by OFM. RCW 36.70A.110(2). Snohomish County, through Snohomish County Tomorrow (**SCT**), allocates projected county population to each city and unincorporated area. Edmonds's Comprehensive Plan population targets are *not* set by applying a growth rate to the current population – for either the City or its associated UGA. Rather, the targets are taken from the Countywide Planning Policies. City Ex. 12. The City is required by the GMA to accommodate these targets, at a minimum. RCW 36.70A.130(3)(b).

In this case, the City explains that calculating back from the allocated 2025 target to its 2007 population yields an average growth rate of .5% a year. City Response at 21, Core A, at 2. However, in order to craft a more generous and flexible Parks Plan, the City chose to project an annual 1% population increase, planning to serve the recreation and open space needs of more residents arriving sooner than OFM and SCT predict. *Id*. at 22. Neither of the parties cites any authority for the proposition that planning to serve *more* growth than allocated within a city or designated UGA is a violation of the GMA. Indeed, the Board has held that elements of a city's comprehensive plan that contemplate a "population capacity that exceeds the county's planning population allocations" to that city, do not "create a *per se* violation of RCW 36.70A.070." *Aagaard v. City of Bothell (**Aagaard I)*, CPSGMHB Case No. 94-3-0011 (Feb. 21, 1995), at 15. Petitioner has not carried her burden of demonstrating that the device is clearly erroneous.

Esperance is an area of unincorporated UGA in the southeast of Edmonds. Esperance is currently under the jurisdiction of Snohomish County but within the planning scope of the City of Edmonds as an unincorporated municipal urban growth area (**MUGA**). The Esperance population target for 2025 is 4,466. The target is taken from Snohomish County Tomorrow (SCT), which gives the Esperance area a 2002 population of 3,516. City Ex. 12, at 29. Ms. Petso states that the 2001 Parks Plan provided a planning target of 8,150 residents in the Edmonds unincorporated MUGA. Petso PHB at 18. What happened to more than 4,000 people? The Board may surmise a plain error in 2001, or that the SCT may have chosen to allocate more growth to another part of the County, or perhaps SCT assumed a lower density of development in the Esperance area since the 2001 allocation.

Whatever errors there might have been in the Esperance population projection in the 2001 Parks Plan, the Board is not persuaded that Edmonds's 2008 Plan is faulty. The 2008 Parks Plan is based, as it must be, on SCT allocations derived from OFM projections. City Response, at 21, fn. 5. The Board notes that City staff made corrections to the population numbers in the recommended Parks Plan update in response to Ms. Petso's comments in April and May. Petso Ex. 12.[37]

The Board appreciates the confusion sometimes created by the OFM population targets. Nevertheless, the Board finds no merit in Ms. Petso's issues on inconsistency with the Comprehensive Plan population numbers. GMA planning is not an exercise in mathematical precision! Rather, it creates a reasoned framework for anticipating and accommodating population growth. "Consistency" does not require one-to-one correlation, particularly when dealing with demographic calculations which are, by definition, fluid.

The Board concludes that Legal Issue 3(a) is without merit. This conclusion also disposes of a portion of Legal Issue 3(h) and Legal Issue 7.

[37] Ms. Petso states that "the math is still wrong," and identifies a 36-person error in the Esperance population, leading to a 46-person discrepancy in the 2025 population projection. Petso PHB, at 18. The City acknowledges a "scrivener's error." City Response, at 22, fn. 7.

Issue 3(b) - Inconsistencies related to Sherwood Park

"Sherwood Park" is the common name of the Old Woodway Elementary School site, 11-acres of property long owned by Edmonds School District. In June of 1999, the School District entered into a 10-year interlocal agreement (**ILA**) with the City of Edmonds and Snohomish County that enabled the City to maintain and use two ball fields on the property. In September 2006, the School District sold the property. A residential real estate developer acquired half of the land.[38] The City purchased and has improved 5.6 acres for a park. However, the City Council has not formally terminated the ILA.[39]

The 2001 Parks Plan showed an interlocal agreement to maintain and use two ball fields and a need for a 3-acre neighborhood park at the site.[40] The 2008 Parks Plan shows a 5.6 acre city-owned park and drops all reference to the Sherwood Park ball fields or the ILA. Core G, at 6-4. The 2008 Parks Plan indicates a new park was constructed on the site in 2008 and includes a children's play area, basketball court, picnic shelter, soccer field, picnic tables, benches, walkways and parking. Core G, App. C, Old Woodway Elementary Park.

Ms. Petso argues that the City remains legally obligated to maintain the Sherwood ball fields and must include them in the 2008 Parks Plan. She points out that the ILA has not been terminated and that the title acquired by the developer is "subject to" the ILA. She asserts that the 2001 Parks Plan showed an intent to acquire the Sherwood playfields and the 2008 Plan abandons that intent – a change which she contends required specific notice. Petso Reply, at 11-12. Petitioner further contends that it is inconsistent to identify a need for play fields, yet "disregard ILAs providing access to two such fields." Petso Reply, at 18.

The Board notes that Section 1.4 of the June 23, 1999, ILA provides:

> This agreement shall commence upon execution by the parties and shall remain in effect for ten (10) years according to its terms.

If the term of the agreement has now expired, it seems to the Board that this dispute may be moot.[41]

In any event, the Board is not persuaded that the City's Parks Plan amendments present an inconsistency. The ILA has been superseded by subsequent events: the School District has sold the property, with a portion acquired by a developer; the County Council has voted to terminate the ILA; and the City has purchased and developed 5.6 acres for park use. Whatever remaining effect the ILA may or may not have, the Board finds that the City appropriately amended its Parks Plan to reflect the actions the three ILA parties and the new private owner

[38] See Petso Ex. 21, at 1066-1071.

[39] Apparently, the County Council approved the termination of the ILA on December 11, 2006. Supp. Ex. 12.

[40] Core F, at 3-8, map following 4-4 and map following 6-1.

[41] The Board has previously determined that it lacks jurisdiction over the Sherwood Park ILA. *Petso I v. Snohomish County*, CPSGMHB Case No. 07-3-0006, Order of Dismissal (Apr. 11, 2007).

have taken. The City is not required to include the ILA in its updated Parks Plan. Nor is it required to purchase the whole property to meet its identified need for youth and adult sports fields.[42] The 2008 Parks Plan indicates continued shared use of the Meadowdale Athletic complex in Lynnwood (Core G, at 4-11) and possible eventual development of a sportsfield complex at the Old Woodway High School site to address the demand for ballfields. Core G, App. A.

The Board finds and concludes that there is no inconsistency in the City's amendment of the Parks Plan with respect to the ILA for the Sherwood Park ballfields.

Issue 3(c) and (f) - Inconsistency between CFP and Parks Plan

Ms. Petso identifies a one-year mismatch between the City's 2008-2014 CFP, adopted in December 2008, and the Parks Plan amendment, also adopted in December 2008, but showing the capital schedule for 2007-2013. Core G, at 7-7. The City responds that the Parks Plan was completed prior to enactment of the 2008 CFP, and the "last portion of the comprehensive plan to be adopted will have more up-to-date cost estimates." City Response, at 23.

The Board acknowledges that portions of the GMA planning process are on different adoption cycles established by statute. Additionally, GMA planning processes take time, and often facts change and underlying assumptions are modified while an update or amendment to one portion is under consideration. Achieving one-to-one correlation between different components is not always practicable.[43]

In the present case, the City of Edmonds began its Parks Plan update in March 2007. The City reasonably incorporated the 2007-2013 CFP when the proposed Parks Plan amendments went forward to the Planning Board and City Council early in 2008. So long as the applicable year of the CFP is clearly labeled, as it is here, and the lag is not extended, the Board is not persuaded that consistency requires last-minute revisions or amendment of another section of the comprehensive plan to incorporate latest projects and numbers.[44]

Issue 3(d) - Failure to Identify Planned Acquisitions

[42] See further discussion under Legal Issues 3(d), 4, 5, and 6.

[43] The *Fallgatter v. City of Sultan* cases demonstrate the complexity that is created when a City doesn't complete key segments of its comprehensive plan and then faces inconsistency challenges in subsequent cycles. See, e.g., *Fallgatter V v. Sultan*, CPSGMHB Case No. 06-3-0003, Order Finding Partial Compliance [Re: Water Plan, Sewer Plan, and Critical Areas Regulations] and Finding Continuing Noncompliance [Re: TIP and Failure to Act] (June 18, 2007); *Fallgatter VIII v. Sultan*, CPSGMHB 06-3-0034, Final Decision and Order (Feb. 13, 2007) (non-compliant Transportation Element and Capital Facilities Element); *Fallgatter VIII*, Order Finding Continuing Noncompliance and Invalidity [Re: TIP] (Oct. 3, 2007).

[44] On remand, the City may (with notice) choose to insert the 2009-2015 CFP, which will be adopted concurrently.

Ms. Petso contends that, for the plan to be internally consistent, the action plan must "bear some relation to the needs assessment." Petso Reply, at 18. She states that the 2008 Parks Plan documents the need to acquire full-sized athletic fields (Core G, at 4-11), but, inconsistently,

- contains no plan to acquire such fields,
- disregards ILA access to two fields,
- sizes neighborhood parks at 2 acres – too small for fields,
- provides an un-needed third skateboard park, and
- shows a capital plan for annual "miscellaneous" acquisitions instead of acquisition of property for fields.

Petso PHB, at 19-21.

Petitioner points out that there are no city-owned playfields for adult field sports in Edmonds, Core G at 3-19, and none proposed for acquisition in the next 6 years. Petso PHB, at 20. Rather the CFP proposes to fund a third skateboard park and to allocate $200,000 yearly to "miscellaneous" acquisitions.

The City responds that the City of Edmonds is almost fully built out, and major acquisition of recreational land is unlikely. City Response, at 3. The 2008 Parks Plan adopts a focus on providing unique regional opportunities on the downtown waterfront, while attempting to meet the demand for adult ball fields through interlocal agreement with neighboring cities and school districts. *Id*. at 31.

For potential acquisitions, the City Parks Plan adopts a strategy of estimating park and recreational needs and then assigning "a general location for a potential park site. The actual location will be determined based on land availability, acquisition cost and the property owner's willingness to sell." City Response, at 3, citing 2001 Parks Plan, Core F, p. 6-1. Thus the 2008 Parks Plan identifies acquisition zones for various types of park facilities.[45]

The Board has not found, and Petitioner has not cited, any GMA provision or case law requiring a city or county to serve the specific recreational preferences of its population. The Legislature has made special provisions for playing fields in the GMA, but has not made them a required component of city or county parks plans.[46] Thus, whether a city provides ball fields or off-leash dog areas, skateboard parks or swimming pools, is within the discretion of the elected officials. The Edmonds 2008 Parks Plan acknowledges the lack of ball fields for youth and adult play, recognizing that many of the local fields are considered substandard for upper-age youth and adult teams. Core G, at 4-11. The need statement is specific:

> The community expressed a need for more availability of fields, especially for adults. Many teams have to drive a long distance for field availability and/or have to play at undesirable times of day.

[45] Core G, Figure "Recommended Plan Facilities," 3rd page after Executive Summary; see also, Table 6-7, Proposed Facilities, at 6-19.
[46] See RCW 36.70A.030(14); .1701 (expired); .171.

But the community priority "ranked moderately compared to other proposed facilities." *Id.*

The Board notes that the City of Edmonds has a history of acquiring and providing waterfront recreational opportunities.[47] The City's public shorelines and dive park provide unique regional recreational opportunities unavailable in other South Snohomish County cities. City Response, at 31. The 2008 Parks Plan contains these acquisition provisions:

- Acquire and develop at least seven additional acres of waterfront property and property in the Downtown Waterfront Activity Center for regional park use. Core G, 6-7.
- Acquire nearshore tidelands whenever feasible. *Id*. 6-7.
- Natural open space … An additional three acres are needed [locations indicated] *Id*. 6-11.
- Acquire neighborhood park sites [designating four locations]. *Id*. 6-1.

The City has chosen to address the need for youth and adult playfields through interlocal agreements and partnerships with other agencies. City Response, at 31; see Petso Ex. 6. In particular, the City has identified inter-local development of sportsfields at the Old Woodway High School site as its preferred strategy to meet the long term demand for more ball fields.[48] Core G, Table 6.7, at 6-19.

The Board finds and concludes that the City has identified planned acquisitions and that these are consistent with needs identified in the Plan.

Issue 3(e) – Inconsistency regarding funding availability

Ms. Petso takes issue with the following statement in the 2008 Parks Plan at 4-15: "The current financial constraints of traditional funding sources limit park acquisition, improvement and maintenance to levels below the aspirational goals of the City."

The City of Edmonds has traditionally relied on dedicated portions of the Real Estate Excise Tax (**REET**) to fund parks projects. A portion of REET Fund 125 is dedicated to parks purposes (other than acquisition) with remaining revenues allocated to transportation projects. REET Fund 126 is dedicated first to debt service and fixed capital costs on various municipal properties, with remaining revenues allocated to parks acquisitions. Core G, 7-1 and 2.

[47] Edmonds has no public golf courses, for example, but it identifies hand-carry boat launch sites as important public recreational facilities on both fresh water and salt water. Core G, at 4-6; Core G, Executive Summary, maps of Existing Plan and Recommended Plan – Facilities in Executive Summary.

[48] Ms. Petso characterizes the CFP allocation to the Old Woodway High School project as "FAKE" and "a red herring." Petso PHB, at 21. The Board assumes good faith on the part of the City, and so does not address these assertions. See, *Fallgatter V. v City of Sultan*, CPSGMHB Case No. 06-3-0003, Final Decision and Order (June 29, 2006), at 21; *Central Puget Sound Regional Transit Agency v. City of Tukwila*, CPSGMHB Case No. 99-3-0003, Final Decision and Order (Sep. 15, 1999), at 7; *Pilchuck v. Snohomish County*, CPSGMHB Case No. 95-3-0047, Final Decision and Order (Dec. 6, 1995), at 38.

However, state law does not require allocation of local REET revenues for parks purposes. That is a choice within the City's discretion.

Petitioner asserts that the language about "financial constraints of traditional funding sources" is inconsistent with the Capital Facilities Plan, "which shows healthy positive balances in the REET funds." Petso PHB, at 21. Ms. Petso states that REET Fund 125 and Fund 126, previously dedicated for parks and open space, have been diverted to transportation and other non-parks uses. She estimates ending cash balances of $2,577,000 in Fund 125 and $3.2 million in Fund 126 by the beginning of 2014. She concludes that the "funding shortfall" language is clearly erroneous. *Id*. at 22.

Ms. Petso indicates the language – "current financial constraints of traditional funding sources" – was added to the Parks Plan in late November, 2008. The Board notes that by late November 2008, the national "housing bubble" had burst.[49] The housing market crashed, major mortgage lenders went bankrupt, and prudent local governments throughout Washington had to re-calibrate their revenue forecasts, especially those based on real estate excise taxes.

Given the severity of the real estate downturn, the Board does not find the added Parks Plan sentence about "current financial constraints of traditional funding sources" to be inconsistent with prior revenue assumptions. Indeed, the City's 2009-2010 Budget for REET Fund 126, which is allocated to special capital obligations of the City and parks acquisitions, shows 2008 revenues down by half from 2007 levels, with a similar projection for 2009 and 2010. Supp. Ex. No. 2. The City Council discussed this dilemma at the July 15, 2008, public hearing on the Parks Plan, taking note of the revenue shortfall. City Ex. 2, at 13.

The Board finds and concludes that the funding shortfall language of the 2008 Parks Plan is not clearly erroneous.

Issue 3(g) - Criteria of ECDC 20.00.050

The City of Edmonds requires comprehensive plan amendments to satisfy the four criteria listed in ECDC 20.00.050:

A. Consistent with Edmonds Comprehensive Plan
B. Not detrimental to public interest, health, safety, and welfare
C. Maintains balance of land uses within the city
D. If amending the map, the subject parcels are physically suitable to anticipated land use

The findings for Ordinance 3717 are contained in Resolution 1185, which recites that the 2008 Parks Plan meets each of the relevant criteria. City Ex. 1, at 1950.

Ms. Petso challenges the finding that the Parks Plan amendment maintains the balance of land uses in the City. Petso PHB, at 22. The challenged finding states:

[49] The Board may take official notice of "notorious facts." WAC 242-02-260.

> The proposed amendment would maintain the appropriate balance of land use within the City by recognizing both the current ability of the City to develop and maintain its parks as well as the City's desire to expand its parks system as funding becomes available.

City Ex. 1, at 1950.

Ms. Petso asserts, first, that the land use balance issue was never discussed by the Council and there can be no findings without deliberation. Second, she asserts that the land use balance is not maintained because, at Sherwood Park, the Plan "converts property from much-needed playfields to not at all needed housing." Petso PHB, at 22.

The Board reads the record differently. It appears to the Board that the City Council thoroughly debated the question of whether the Parks Plan amendments as a whole maintained the appropriate land use balance. For example, at the May 20, 2008 City Council meeting, Councilmember Wilson raised the concern that the Parks Plan revision had reduced total park acreage.[50] Parks Director McIntosh responded that the Parks Plan reflected an increase in total park acreage. Petso Ex. 19. Further discussion of the land use balance took place at the July 15, 2008, Council meeting, where Council members debated where and how the park ratio could be increased as the City's population grows. Petso Ex. 9, at 14-15. The minutes from the Council's special workshop of August 18, 2008, express the issue as "not wanting to scale back the vision for parks," or "how a realistic plan could also be ambitious." Petso Ex. 1.

The Board finds that the City Council clearly considered maintaining the balance of parks in the City's land use plans and that the finding to this effect was made after deliberation in a series of Council meetings. It appears to the Board that the planned acquisitions in the Parks Plan (DWAC, neighborhood parks, and open space) provide ample support for a City Council determination that total parks acreage would remain in balance.[51]

The Board concludes that Petitioner has not carried her burden of demonstrating inconsistency with ECDC 20.00.050.

[50] The minutes reflect: "Mr. McIntosh clarified the Park Comprehensive Plan reflected an increase in total park acreage. … Councilmember Wilson understood Ms. Petso's comments that there had been a decrease in park inventory. Mr. McIntosh assured there had not been a decrease in park acreage; the level of service numbers changed slightly due to a difference in classification." Petso Ex. 19, May 20, 2008 City Council minutes, at 16.

[51] Again, "maintaining a balance" of land uses does not require mathematical equivalency. Few comprehensive plan amendments would meet an equivalency standard.

Issue 3(h) – Esperance and Comp Plan Purposes

In this Legal Issue, Ms. Petso's prehearing brief references her concerns about the Esperance population numbers, which the Board has addressed above in Issue 3(c).

Then Ms. Petso identifies several policies of the Edmonds Comprehensive Plan (Core A) that, in her view, are contravened by the 2008 Parks Plan.

Adequate Facilities. A core purpose of the Edmonds Comprehensive Plan is "to facilitate adequate provisions for public services such as … parks." Core A, p. 1. Ms. Petso contends that the needs assessment in the Parks Plan shows lack of adequate playfields for older youth and adults, but no proposal to address the inadequacy, thus contravening the Comprehensive Plan policy. Petso PHB, at 23. The question of adequacy of facilities to address identified needs was resolved by the Board under Legal Issue 3(d) above.

Maintaining Level of Service. Ms. Petso points out that the Comprehensive Plan requires development of concurrency management systems in order to achieve and maintain level of service standards. Core A, at 88. Ms. Petso states that the Parks Plan has no concurrency strategy but rather "allow[s] level-of-service standards to fall as population increases." Petso PHB, at 23. The Board discusses this issue at length under Legal Issue 8, *infra*.

Abandonment of Parks. The Comprehensive Plan provides that no park or other public facility shall be abandoned without a hearing examiner review and determination of consistency with the Comprehensive Plan. Core A, p. 2 – Effect of Plan (B) Public Projects (**Abandonment Policy**). The Abandonment Policy does not, on its face, distinguish between city-owned and other publicly-owned facilities. Since the 2008 Parks Plan abandons the Sherwood Park playfields without the required hearing, Ms. Petso contends that the Parks Plan is inconsistent with the Comprehensive Plan. Petso PHB at 23. The Board notes that 5.6 acres of the 11-acre Sherwood site have been acquired by the City and developed as a neighborhood park. For the remainder of the site, which has been sold for private development, the City has not provided the Board with any information about the required hearing examiner review.

The Board is remanding this matter to the City for a re-noticed public hearing. The Board will also require the City, at the Compliance Hearing, to demonstrate consistency with its Comprehensive Plan Policy on abandonment of public facilities.[52]

Conclusion – Legal Issue 3

[52] The remainder of the site has been purchased by a private developer for residential development. Generally such development requires sub-division and other permits, entailing hearing examiner review to determine, among other criteria, consistency with the Comprehensive Plan. Alternatively, the City might hold the required hearing examiner review at the time that it votes on termination of the ILA or acknowledges its expiration.

The Board finds and concludes that Petitioner has **failed to carry her burden** of demonstrating that the 2008 Parks Plan is internally inconsistent, inconsistent with the Edmonds CFP, or inconsistent with the Edmonds Comprehensive Plan, except with respect to the policy of a required hearing examiner review before abandonment of a public facility. Legal Issues 3(a) through 3(g) are **dismissed**. Legal Issue 3(h) is **remanded** to the City of Edmonds for action to achieve consistency with Edmonds Comprehensive Plan Policy - Effect of Plan (B) Public Projects.

LEGAL ISSUE 4
Lands Useful for Public Purposes

The Prehearing Order states Legal Issue No. 4 as follows:

> *Legal Issue 4. Lands Useful for Public Purposes*. Does the Parks Plan amendment violate RCW 36.70A.150 by failing to designate parks on properties not owned by the City as "lands useful for public purposes," and failing to plan for acquisition of those properties?

Applicable Law

RCW 36.70A.150 provides:

> Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify lands useful for public purposes such as utility corridors, transportation corridors, landfills, sewage treatment facilities, storm water management facilities, recreation, schools, and other public uses. The county shall work with the state and the cities within its borders to identify areas of shared need for public facilities. The jurisdictions within a county shall prepare a prioritized list of lands necessary for the identified public uses including an estimated date by which the acquisition will be needed.
>
> The respective capital facilities acquisition budgets for each jurisdiction shall reflect the jointly agreed upon priorities and time schedule.

Discussion and Analysis

Ms. Petso asserts that the City has failed to identify lands useful for recreational purposes, failed to prepare a prioritized list and dates for acquisition, and failed to include the necessary moneys in its capital budget – thus failing to comply with GMA Section .150. Petso PHB, at 23.

This Board examined the RCW 36.70A.150 requirement in *Sky Valley v. Snohomish County*, CPSGMHB Case No. 95-3-0068c, Final Decision and Order (March 12, 1996), at 61-62. Analyzing the structure of the statute, the Board concluded that the .150 requirement was not "open-ended;" rather, "cities and counties must complete the identification [of lands useful for

public purposes] by the time of adoption of their comprehensive plan." *Id.* at 62. Finding no such inventory in the Snohomish County plan, the Board remanded the plan for compliance with the .150 requirements.

In *Aagaard I v. City of Bothell*, CPSGMHB Case No. 94-3-0011c, Final Decision and Order (Feb. 21, 1995), the Board reviewed the City of Bothell's comprehensive plan to find its inventory of lands useful for recreation. The Board found compliance with Section .150 in the "maps and graphic depictions" of public parks, open space, trails, and a proposed trail.[53] *Id.* at 17-18. In other words, there was no requirement that the city produce a separate document of "lands useful for public purposes."

In *Pirie v. City of Lynnwood*, CPSGMHB Case No. 06-3-0029, Final Decision and Order (Apr. 9, 2007), the Board looked to a sub-area plan – the City Center Area Plan - for identification of lands useful for public purposes:

> The Board notes that the City Center Area Plan includes maps identifying parks/plazas and new ROW, *i.e*. LUPP. Although not challenged by Petitioner, the Board additionally notes that the City Center Plan speaks to "Priorities for Public Investment" and contains a section on "Proposed Strategic Projects and Programs" that require capital investment. Additionally, a Comprehensive Plan (as well as subarea plans – the City Center Area Plan) covers a twenty-year planning horizon; consequently, any investments or acquisitions must occur within that timeframe.

Pirie, at 32 (citations omitted).

In the *Pirie* case the Board concluded that the "capital facilities acquisition budget" requirement of Section .150 applies only to shared, or jointly agreed to, public facilities, and is not applicable to projects wholly within a jurisdiction.[54]

The Board has long held that Section .150 does not mandate acquisition plans for specific parcels of recreational land. In *Aagaard I, supra*, Ms. Aagaard urged the City of Bothell to designate a dairy property for a future park. The Board said:

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[53] In the *Aagaard* decision, at 12, the Board said:

> This section of the Act [Section .150] does not specifically require the City to identify land for parks: the reference to "recreation" is not necessarily synonymous with "parks."

[54] On a careful reading of Section .150, it appears to the Board that the last three sentences must be taken together to refer to facilities addressing "shared need."

> The county shall work with the state and the cities within its borders to identify areas of shared need for public facilities. The jurisdictions within a county shall prepare a prioritized list of lands necessary for the identified public uses including an estimated date by which the acquisition will be needed. The respective capital facilities acquisition budgets for each jurisdiction shall reflect the jointly agreed upon priorities and time schedule.

> While Aagaard may be dissatisfied with the substantive planning made by the City for the Bill's Dairy property, there is no requirement in the Act that this particular parcel be designated for parks or public purposes. That decision is left to the substantive discretion of the City.

Id. at 13.

The Supreme Court's affirmation of the Board's *Green Valley* decision underscores that RCW 36.70A.150 does not require a plan for acquisition of specific parcels of land for parks. In *Green Valley v. King County*, CPSGMHB Case No. 98-3-0008c, Final Decision and Order (July 29, 1998) at 16, the Board stated:

> The verb "identify" in the context of these sections conveys an intent to inventory or take stock of lands that may be useful for recreational purposes. Neither .150 nor .160 creates a duty to do anything with the inventory, such as regulate, protect, conserve, or provide parks facilities.

In affirming, the Supreme Court observed that while a county must "identify" lands useful for recreation under Section .150, "there is no conservation mandate for recreational use." *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 562 (2000) In short, RCW 36.70A.150 imposes no obligation to acquire particular properties for recreational purposes or to conserve existing parks lands.

In the present case, the Board finds that Edmonds's 2008 Parks Plan contains an inventory of lands useful for public purposes for recreation. Public lands useful for recreation are identified in the maps of the 2008 Parks Plan: Core G, "Recommended Plan – Facilities," and "Recommended Plan – Connections."[55] The Board finds that the Plan also indicates priorities for acquisition, including neighborhood parks, waterfront and downtown areas, and natural open space.[56] See Legal Issue 3(d), *supra*. The Board finds and concludes that the 2008 Parks Plan **complies** with the applicable provisions of RCW 36.70A.150.

Conclusion – Legal Issue 4

The Board concludes that Petitioner has **not carried her burden** of demonstrating non-compliance with RCW 36.70A.150. The Edmonds 2008 Parks Plan identifies lands useful for public purposes and **complies** with the applicable requirements of Section .150. Legal Issue 4 is **dismissed**.

LEGAL ISSUE 5
Goal 9: Open Space and Recreation

[55] The City also points to a detailed identification of walkways and bicycle routes, which serve both recreational and transportation needs. City Response, at 27; Core C and D.

[56] E.g., Core G, at 6-1, 6-7, and 6-11.

The Prehearing Order states Legal Issue No. 5 as follows:

> *Legal Issue 5. Goal 9 – Open Space and Recreation.* Does the Parks Plan amendment fail to comply with RCW 36.70A.020(9), RCW 36.70A.010,[57] and Goal I on page 5 of the General Plan, as follows:
>
> > 5(a). The Park amendment replaces planned park acquisition with unplanned, "politically convenient" park acquisition.
> >
> > 5(b). The Park amendment drops an established ILA for park use when the public need for the ILA and the park use remains.

Applicable Law

RCW 36.70A.020(9) is the GMA Planning Goal for open space and recreation:

> (9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

Edmonds Comprehensive Plan Goal I (Core A, at 5) restates GMA Goal 9:

- Open space and recreation: Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks.

Discussion and Analysis

Ms. Petso asserts that GMA Goal 9 and Edmonds Comprehensive Plan Goal I are violated by the 2008 Parks Plan "with its 'zero' acquisition for the ease and convenience of staff." Petso PHB, at 24. She states:

> When a City's park plan consists of ignoring an ILA allowing public access to two free playfields, and lists only 'miscellaneous' acquisitions in the CFP, the City is not 'planning.' 'Miscellaneous' is not a plan.

Id. In particular, she criticizes the purchase of Shell Creek Open Space, "an election year purchase of puny park directly across the street from the City's largest park" and not meeting the City's criteria for open space acquisition. *Id.*

The Board has previously addressed the question of planned acquisitions in the Edmonds Parks Plan under Legal Issue 3(d) Failure to Identify Planned Acquisition, and Legal Issue 4

[57] As previously noted, RCW 36.70A.010 provides legislative findings for the GMA and does not provide the basis for a compliance challenge.

Lands Useful for Public Purposes. The Board finds no merit in Petitioner's additional arguments under GMA Open Space and Recreation Goal 9 and Edmonds Comprehensive Plan Goal I.

The Board finds many elements in the 2008 Parks Plan that implement Goal 9:

- retention of open space,
- enhancement of a variety of recreational opportunities,
- increased access to water, and
- development of parks and recreational facilities.

These may not be the recreational facilities and opportunities sought by this Petitioner, but the choice is within the discretion of the elected officials.

In *Gig Harbor et al v. Pierce County*, CPSGMHB Case No. 95-3-0016, Final Decision and Order (Oct. 31, 1995), at 13-14, the Board considered the Goal 9 language: "develop parks."

> RCW 36.70A.020(9) employs four verbs: encourage, conserve, increase and develop. … The use of the word "develop" here is one of the more directive requirements. Yet the goal is silent as to what extent development should occur, and when, where and how. …
>
> Because of the Act's vagueness, individual jurisdictions must decide to what extent they will develop additional parks. It also falls within local discretion to ascertain when, where, and how the goal of developing parks will be accomplished. Because the Act imposes no guidelines on the use of this discretion, the Board's review of a jurisdiction's action is limited to ascertaining whether a comprehensive plan was guided by the Act's planning goal to "develop parks." Complaints that insufficient numbers of certain types of parks are proposed, or will not be developed soon enough and/or at the proper locations must be addressed locally through the legislative process or at the ballot box.

In the *Gig Harbor* case, the Board took note of the County's plan to add neighborhood parks and to initiate school playground/County park joint use agreements. The Board concluded that the County's plan was guided by the Goal 9 requirement to "develop parks." *Id.*

The Edmonds 2008 Parks Plan also anticipates adding neighborhood parks and relying on interlocal agreements with the school districts and others for playfields and other recreational opportunities. In addition, there are ongoing plans to "develop parks" including, for example, an Aquatics Center, the Downtown Waterfront Activity Center, a neighborhood park at the Sherwood ballfield site, and a sportsfield complex at Old Woodway High School. Clearly the 2008 Parks Plan was guided by GMA Goal 9.

Conclusion – Legal Issue 5

The Board concludes that Petitioner has **not carried her burden** of demonstrating non-compliance with RCW 36.70A.020(9) and Edmonds Comprehensive Plan Goal I. The Board finds and concludes that the City's adoption of the 2008 Parks Plan **was guided by** Planning Goal 9. Legal Issue 5 is **dismissed**.

LEGAL ISSUE 6
Mandatory Comprehensive Planning

The Prehearing Order states Legal Issue No. 6 as follows:

> *Legal Issue 6. Mandatory Comprehensive Planning.* Does the Parks Plan amendment violate RCW 36.70A.070 as follows:
>
> 6(a). The Park amendment omits facilities from the inventory, fails to accurately develop level of service standards, and omits thousands of MUGA residents from the level of service calculation.
>
> 6(b). The Park amendment fails to include the ILA's for park use at Sherwood Park in the evaluation of intergovernmental opportunities for a regional approach to meeting park needs.
>
> 6(c). The Parks Plan was not correctly amended.[58]

Applicable Law

RCW 36.70A.070(8) sets out the requirements for the parks element of a comprehensive plan:

> (8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities. The element shall include: (a) estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

Discussion and Analysis

The GMA has four requirements for the parks element of a comprehensive plan:

[58] Legal Issue 6(c) has reference to the public participation process deficiencies discussed above under Legal Issue 1.

- Consistency with and implementation of capital facilities plan
- Ten-year estimate of park and recreation demand
- Evaluation of facilities and service needs
- Evaluation of intergovernmental approaches for meeting park and recreation demand

RCW 36.70A.070(8).

On its face, the 2008 Parks Plan meets all four requirements.

- The Board has already addressed the question of consistency with the capital facilities plan. See Legal Issue 3(c) and (f) above.
- The Board is satisfied that the 2008 Parks Plan provides a fair estimate of park and recreation demand, both by its use of web and telephone surveys and by its deliberate overstating of the rate of population growth. Petitioner does not challenge the City's estimate of demand so much as the City's response to the demand. The City points out that the statute requires that the City must estimate the demand, not that it must meet it. HOM, at 57.
- The Plan clearly evaluates facilities and service needs. Core G, Chapter 4.
- Intergovernmental approaches are assessed to meet several areas of demand. See, e.g., Core G, at 3-3 to 3-5; 6-1 (2 neighborhood parks); 6-7 (tournament-level sports complex); 6-13 (connections).

However, Petitioner Petso asserts that the 2008 Parks Plan fails due to inaccuracies in population projections, omission of facilities such as the Sherwood Park playfields, and inappropriate counting of other municipal facilities as open space. Petso PHB, at 24; Petso Reply, at 22-24.

The Board has addressed the issue of inaccuracies in population counts in Legal Issue 3(a), above, and the Sherwood playfields ILA under Legal Issue 3(b).[59]

Petitioner also questions the City's inclusion of some publicly-owned land in its inventory of "open space." Petitioner disputes the designation of the historical museum and the sidewalks and parking lots of certain municipal facilities as "open space." Petso Reply, at 23. She challenges the acreages in the City's Plan accordingly.

In reviewing the Edmonds 2008 Parks Plan, the Board finds that "special use areas" and "beautification areas" are significant elements of the City's vision. The Executive Summary speaks to the City's "unique character reflected in streetscape, beautification and gathering spaces." Special use areas are public facilities such as plazas, the Historic Museum, Wade James Theater, and Willow Creek Hatchery. Core G, at 3-18. Beautification areas include

[59] Further, Petitioner challenges compliance with the requirement to evaluate intergovernmental coordination opportunities. She contends that the City needs to assess the potential *downside* of relying entirely on intergovernmental partnerships for adult soccer and softball fields, particularly under agreements that can be terminated unilaterally on short notice. Petso PHB, at 25. Ms. Petso cites no authority for this interpretation of the statutory standard.

landscaping along street rights-of-way and at public buildings, such as the Edmonds Treatment Plant and the Public Safety Civic Complex. Core G, at 3-3. One hundred fifty hanging flower baskets, street trees, and public art are also integral to the plan. *Id.* Flowers and decorative landscaping are promoted as attracting visitors as well as enhancing real estate values and the quality of life for residents and business people. Core G, Executive Summary.

In the Plan's inventory of existing facilities, the beautification areas are lumped into the "open space" category. This adds 9.8 acres to the 305-acre total of open space in the inventory. Core G, at 3-18. "Open space" is described in the Parks Plan as "undeveloped land left primarily in its natural state…" Core G, at 3-2. As Ms. Petso points out, not all of the beautification areas fit neatly into the "open space" category. Some of them are developed civic properties that might more appropriately be included with the "special use areas."[60]

Petitioner's concern appears to be that any mischaracterization will skew the acreage totals that go into the LOS calculations. Thus the facilities assessment and/or evaluation of demand will be flawed and non-compliant with RCW 36.70A.070(8).

The Board is not persuaded that the possible mischaracterization of one or more of the beautification areas amounts to failure to comply with the statute. In the context of the whole plan, the acreages in question are insignificant. The 2008 Parks Plan identifies the beautification areas – flower baskets, street trees, landscaped medians and civic properties – as a signature feature of the City. Whether labeled "open spaces" or "special use areas," they are appropriately included in the City's "estimate of park and recreation demand" and "evaluation of facilities and services needs," as RCW 36.70A.070(8) requires. The Board is not "left with a firm and definite conviction that a mistake has been committed" in the City's inclusion of beautification areas in its 2008 Parks Plan.

Conclusion – Legal Issue 6

The Board concludes that Petitioner has **not carried her burden** of demonstrating non-compliance with the mandatory planning requirements for the parks and recreation element of RCW 36.70A.070(8). Legal Issue 6 is **dismissed**.

LEGAL ISSUE 7
Urban Growth Area Planning

The Prehearing Order states Legal Issue No. 7 as follows:

> *Legal Issue 7. Urban Growth Area Planning.* Does the Parks Plan amendment violate RCW 36.70A.110 and RCW 36.70A.130 by excluding acres and residents of Esperance from the inventory, level of service calculation, and map?

[60] For example, a civic parking lot that hosts the farmers' market.

Applicable Law

RCW 36.70A.110 requires each county to identify urban growth areas and to work with its cities to designate boundaries and to plan for the provision of urban services. **RCW 36.70A.130** requires comprehensive plans for UGAs to be updated on a regular cycle "to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period."

Discussion and Analysis

Ms. Petso argues that "the population projection [for Esperance] is wrong, and it appears the starting population is also wrong." Petso PHB, at 25. The Board discussed and resolved the Esperance population question under Legal Issue 3(a), *supra*, finding the City's action not clearly erroneous. Petitioner makes no additional arguments regarding acreage, level of service, or mapping for the Esperance area.

Conclusion – Legal Issue 7

Petitioner has **not carried her burden of demonstrating non-compliance** with the requirements for UGA planning in RCW 36.70A.110 and .130. Legal Issue 7 is **dismissed.**

LEGAL ISSUE 8
Goal 12: Public Facilities and Services

The Prehearing Order states Legal Issue No. 8 as follows:

> *Legal Issue 8. Goal 12 – Public Facilities and Services.* Does the Parks Plan amendment fail to comply with RCW 36.70A.020(12), RCW 36.70A.010, [61] RCW 36.70A.110, Goal B.2 on page 3 of the General Plan and Goals I and L on page 5 of the General Plan, as follows:
>
> > 8(a). The Park amendment does not have adequate parks for current development and to meet development needs for the 20-year planning period.
> >
> > 8(b). The Park amendment does not have adequate parks for current development and adopts a zero level of service for adult baseball, softball and soccer fields and year round pools.

Applicable Law

RCW 36.70A.020(12) is the GMA planning goal for Public Facilities and Services:

[61] As previously noted, RCW 36.70A.010 provides legislative findings for the GMA and does not provide the basis for a compliance challenge.

> (12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

RCW 36.70A.110(3) begins:

> (3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development ….

Edmonds Comprehensive Plan Goals I and L on page 5 reiterate GMA Goals 9 (Open space and recreation) and 12 (Public facilities and services), respectively.

Edmonds Comprehensive Plan Goal B-2 provides:

> The Comprehensive Plan and its implementation measures should be developed and maintained in such a manner to guarantee that there are sufficient resources to insure established levels of community services and that ample provisions are made for necessary open space, parks and other recreation facilities.

Discussion and Analysis

Ms. Petso contends that the recommended demand standards adopted in the 2001 Parks Plan, along with any new assessment of needs, compels a plan to acquire the acreage and fund the improvements necessary to meet the standards. Petso PHB, at 26. The 2001 Plan called for 4 additional baseball fields, no additional softball fields, and 2 additional soccer fields by 2010. Core F, at 4-20 to 4-25. The 2001 plan pointed out that lighting, maintenance, and access to existing fields could improve their availability. *Id*. However, with the School District's sale of the Sherwood Park site, two adult playfields have been lost.

Does the GMA require that Edmonds's 2008 Parks Plan achieve the levels of service for parks that the 2001 Plan adopted? GMA Goal 12 requires the local government to ensure that the public facilities and services necessary to support development will be adequate "without decreasing current service levels below locally established minimum standards." Petitioner here protests that current service levels for field sports have been decreased and local LOS standards have been reduced.

In *McVittie VI v. Snohomish County*, CPSGMHB Case No. 01-3-0002, Final Decision and Order (July 25, 2001), at 16-17, the Board focused on the Goal 12 phrase, "those public facilities and services *necessary to support development.*" McVittie challenged the Snohomish County Capital Facilities Plan. Snohomish County had divided its Capital Facilities Plan into facilities "necessary to support development," such as transportation, water and sewer, and

"other facilities and services," such as law and justice and parks, that are not so directly linked to subdivisions and local development patterns.

In a prior *McVittie* case, the Board had reviewed and sought to harmonize the various GMA provisions concerning capital facilities: *McVittie I v. Snohomish County*, CPSGMHB Case No. 99-3-0016c, Final Decision and Order (Feb. 9, 2000), at 22. The Board held that the capital facilities element must include public facilities such as parks and recreation [RCW 36.70A.030(12) and (13)], and that all such facilities must have minimum service levels [RCW 36.70A.020(12)], an inventory, needs assessment, and location and capacity of future facilities to meet needs [RCW 36.70A.070(3)]. In addition, the CFP must explicitly state which of the listed public facilities are determined to be "*necessary to support development*" under Goal 12. The enforcement principles of Goal 12 apply only to those services necessary to support development.

In *McVittie I*, the Board concluded: "Goal 12 allows local governments to determine what facilities and services are necessary to support development." *McVittie I*, at 30. The Board upheld Snohomish County's determination that parks and recreational facilities were not in that category.

> Therefore, Goal 12 enables local governments to exercise their discretion in making reasoned determination of which public facilities and services are necessary to support development within the jurisdiction.

Id. at 28. For facilities and services that are not deemed "necessary to support development," the adopted LOS standards provide planning guidelines, not an enforcement mechanism. *Id*. at 11-12; *McVittie VI*, at 12-16.

In the present matter, the City of Edmonds clarifies that its parks strategy is based on the fact that it is already a built-out city. City Response, at 3. As such, it has chosen not to rely on developer fees or exactions of land to meet parks needs. *Id*. at 16-17. "Rather, it identifies perceived needs and looks to meet those needs as opportunities arise within specific zones or service areas." *Id.*

Thus the City of Edmonds has developed service standards for various types of parks and recreation facilities. These standards inform the City's planning for the future, but they do not compel the City to make specific investments. In the 2001 Parks Plan, for each type of park or sports facility, the City calculated a "present ratio" of acres or fields per 1000 population and a "recommended demand standard" by 2010. Core F, App. B. In the 2008 Parks Plan, the "present ratio" is called the "existing level of service" (ELOS) and the "recommended demand standard" is called the "proposed level of service" (PLOS) and is projected out to 2025. Core G, Table 4.2 at 4-15.[62] The 2008 Plan does not adopt a level-of-service standard

[62] The 2008 Parks Plan explains, at Core G, 4-2:

> Traditionally, need or level of service standards were given as the 'existing ratio' or 'recommended standard.' The existing ratio is the existing amount of parks divided by the existing population within the planning area. It is expressed in terms of acres per 1000

for sports fields.[63] However, the Facility Inventory Worksheets in Appendix A of the 2008 Parks Plan show ELOS, PLOS, and NPRA LOS calculations. These worksheets show that planned development of a sportsfield complex at the Old Woodway High School site will satisfy the City's (and NPRA) standards for adult soccer fields.[64]

One of the options for a jurisdiction that determines that it cannot, for whatever reason, meet its level of service goals, is to amend those goals. *McVittie I*, at 36, fn. 50.[65] The City has done just that. The City has characterized the changes in LOS as "not significant," explaining: "These are soft goals, not hard concurrency goals, which would be used neither to [impose] developer exactions nor to match growth to these LOS." City Response, at 17. The Board agrees.

The Board finds and concludes that the City's action in adopting the LOS levels and funding strategies in the 2008 Parks Plan was within its discretion and did not thwart GMA Planning Goal 12.

Conclusion – Legal Issue 8

Petitioner has **not carried her burden of demonstrating** the City was not guided by GMA Planning Goal 12, RCW 36.70A.020(12), or failed to comply with RCW 36.70A.110. Legal Issue 8 is **dismissed.**

LEGAL ISSUE 9
Action in Conformity with the Plan

The Prehearing Order states Legal Issue No. 9 as follows:

> *Legal Issue 9. Action in Conformity with Plan.* Does the City's action in adopting the Parks Plan amendment violate RCW 36.70A.120 because the City failed to act in conformity with the General Plan?

Applicable Law

RCW 36.70A.120 provides:

> population. These standards are shown in relation to general national and state standards for comparison only, but each community is unique, so these general standards need to be weighed against individual community values and perceptions. The recommended standard, therefore, is derived through the public process and tested against the factors previously discussed, such as availability and financing. It is then expressed in terms of acres per 1000 population.

[63] Some of the acreage for such fields is presumably included in acreage totals for community or regional parks.

[64] As previously noted, Petitioner discounts this item.

[65] See also, *West Seattle Defense Fund v. City of Seattle*, CPSGMHB Case No. 94-3-0016, Final Decision and Order (Apr. 4, 1995), at 60; *Bennett v. City of Bellevue*, CPSGMHB Case No. 01-3-0022c, Final Decision and Order (Apr. 8, 2002), at 11.The Board has indicated that setting or lowering LOS levels is within the discretion of the elected officials, and LOS levels are not reviewed by the Board. *Id.*

> Each [city] shall perform its activities and make capital budget decisions in conformity with its comprehensive plan.

Discussion

Petitioner's brief on this issue consists primarily of conclusory statements which this Board need not consider.[66] Nevertheless, the Board notes that Petitioner reiterates two concerns which have been addressed above.

First, Petitioner asserts that the Parks Plan includes capital decisions not in accord with the Comprehensive Plan, by proposing to use parks funds for "sidewalks, parking lot repair at the senior center, purchases of a city hall, roof repairs or seismic work."[67] Petso PHB, at 26. This concern was addressed at Legal Issue 3(e), supra.

Second, she states that "abandoning the [Sherwood Park] playfields without the required hearing" is a capital decision that does not conform to the Comprehensive Plan. *Id*. This matter was addressed under Legal Issue 3(h), *supra*, the Board concluding that the matter will be remanded to the City for action consistent with the abandonment policy in the Comprehensive Plan.

Conclusion – Legal Issue 9

The Board remands Ordinance 3717 to the City for action consistent with its Comprehensive Plan abandonment policy. Petitioner has **not carried her burden of demonstrating** the City violated RCW 36.70A.120 in any other respect by failing to act in conformity with its Comprehensive Plan.

VI. INVALIDITY

The Board has previously held that a request for invalidity is a prayer for relief and, as such, does not need to be framed in the PFR as a legal issue. *See King County v. Snohomish County*, CPSGMHB Case No. 03-3-0011, Final Decision and Order (Oct. 13, 2003), at 18. Here, Petitioner Petso has framed a request for a determination of invalidity. Petso PHB, at 26-27.

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[66] See, e.g., *Abbey Road Group v. City of Bonney Lake*, CPSGMHB Case No. 05-3-0048, Final Decision and Order (May 15, 2006), at 15; *MBA/Brink v. Pierce County*, CPSGMHB Case No. 02-3-0010, Final Decision and Order (Feb. 4, 2003), at 21-24; *Cave/Cowan v. City of Renton*, CPSGMHB Case No. 07-3-0012, Final Decision and Order (July 30, 2007), at 15.

[67] As indicated, REET Fund 126 is dedicated first to debt service on various municipal properties, with remaining revenues allocated to parks acquisitions. A portion of REET Fund 125 is dedicated to parks purposes (other than acquisition) with remaining revenues allocated to transportation projects. Core G, 7-1 and 2. Re-allocating these revenues is within the City Council's discretion.

Applicable Law

RCW 36.70A.302, the GMA's invalidity provision**,** provides in part:

> (1) A board may determine that part or all of a comprehensive plan or development regulation are invalid if the board:
>
> (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
> **(b)** Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter ….

Discussion and Analysis

In the discussion of notice and public participation, *supra*, the Board found and concluded that the City of Edmonds's adoption of Ordinance No. 3717 was **clearly erroneous** and **non-compliant** with the effective notice requirements of RCW 36.70A.035 and .140. In the discussion of the GMA consistency requirement, the Board found an inconsistency with the Edmonds Comprehensive Plan policy concerning abandonment of a public facility, in violation of the consistency requirements of RCW 36.70A.070 (preamble) and RCW 36.70A.120. The Board is **remanding** Ordinance No. 3717 with direction to the City to comply with the requirements of the GMA.

The Board has sometimes held local government actions invalid where the GMA requirements for notice and public participation or consistency have been violated.[68] Here, however, the Board is not persuaded that "the continued validity of part or parts of the plan [during the period of remand] would substantially interfere with fulfillment of [GMA] goals." The Board has concluded that the City's adoption of Ordinance 3717 **was guided by** the three GMA goals at issue here: Goal 9 – Open space and recreation, Goal 11 – Citizen participation and coordination, and Goal 12 – Public facilities and services. The Board establishes an abbreviated compliance schedule accordingly and declines to enter an order of invalidity.

Conclusion

The request for a determination of invalidity is **denied.**

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[68] *See, e.g.*, *Kelly v. Snohomish County*, CPSGMHB Case No. 97-03-0012c, Final Decision and Order (July 30, 1997) (County redesignated land as commercial at the last minute at the last meeting); *Homebuilders v. Bainbridge Island*, CPSGMHB Case No. 00-3-0014, Final Decision and Order (Feb. 26, 2001) (City notice indicated revision of wetland regulations without more specific information about how wetlands would be affected); *WHIP/Moyer v. Covington*, CPSGMHB Case No. 03-3-0006c, Final Decision and Order (July 31, 2003) (City adopted last minute rezone).

VII. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board Orders and case law, having considered the arguments of the parties, and having deliberated on the matter, the Board ORDERS:

1. Petitioner has **failed to carry her burden** of demonstrating that the City's adoption of Ordinance 3717 (a) did not comply with RCW 36.70A.010, .130, .070(8), .110(2), .150; (b) violated or was inconsistent with the provisions of ECDC Chapter 20.00 or the cited Edmonds Comprehensive Plan goals and policies (except for the abandonment policy); or (c) was not guided by GMA Planning Goals 9, 11, and 12.

2. Legal Issues 1(a) and (c), 2, 3(a) through (g), 4, 5, 6(a) and (b), 7, and 8(a) and (b) are **dismissed with prejudice**.

3. The City of Edmonds's adoption of Ordinance 3717 was **clearly erroneous** in two respects:

    - The City did not comply with RCW 36.70A.035 and .140 by failing to provide effective notice of the proposed amendments to its 2001 Parks Plan.
    - The City has not demonstrated consistency with Comprehensive Plan Policy B on page 2 (abandonment policy) with respect to the Sherwood Park playfields, thus failing to comply with RCW 36.70A.070(preamble) and .120.

4. Therefore the Board **remands** Ordinance 3717 to the City of Edmonds with direction to the City to take legislative action to comply with the requirements of the GMA as set forth in this Order.

5. The Board sets the following schedule for the City's compliance**:**

- The Board establishes **December 15, 2009,** as the deadline for the City of Edmonds to take appropriate legislative action.

- By no later than **January 4, 2010**, the City of Edmonds shall file with the Board an original and three copies of the legislative enactment described above, along with a statement of how the enactment complies with this Order (**Statement of Actions Taken to Comply - SATC**). The City shall simultaneously serve a copy of the legislative enactment(s) and compliance statement, with attachments, on Petitioner. By this same date, the City shall also file a "**Compliance Index**," listing the procedures (meetings, hearings etc.) occurring during the compliance period and materials (documents, reports, analysis, testimony, etc.) considered during the compliance period in taking the compliance action.

- By no later than **January 18, 2010**,[69] the Petitioner may file with the Board an original and three copies of Response to the City's SATC. Petitioner shall simultaneously serve a copy of her Response to the City's SATC on the City.

- By no later than **February 1, 2010**, the City may file and serve a Reply to the Petitioner's Response.

- Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **10:00 a.m. February 8, 2010,** at a location to be announced. If the parties so stipulate, the Board will consider conducting the Compliance Hearing telephonically. If the City of Edmonds takes the required legislative action prior to the December 15, 2009, deadline set forth in this Order, the City may file a motion with the Board requesting an adjustment to this compliance schedule.

So ORDERED this 17th day of August, 2009.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____
David O. Earling
Board Member

_____
Margaret A. Pageler
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.[70]

[69] January 18, 2010, is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. *See* RCW 36.70A.330(2). The Compliance Hearing is limited to determining whether the City's remand actions comply with the Legal Issues addressed and remanded in this FDO.

[70] Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the

APPENDIX A
CHRONOLOGY OF PROCEDURES
CPSGMHB Case No. 09-3-0005 *Petso II v. City of Edmonds*

On February 18, 2009, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Lora Petso (P**etitioner** or **Petso**), *pro se*. The matter was assigned Case No. 09-3-0005, and is hereafter referred to as *Petso II v. City of Edmonds.* Board member Margaret Pageler is assigned as the Presiding Officer for this matter. Petitioner challenges the City of Edmonds's (**Respondent** or **City**) adoption of Ordinance No. 3717 amending the City's Comprehensive Plan with regard to the Parks and Recreation Plan. The basis for the challenge is non-compliance with various provisions of the Growth Management Act (**GMA or Act**).

On February 25, 2009, the Board received a Notice of Appearance from W. Scott Snyder of Ogden Murphy Wallace, P.L.L.C. on behalf of the City of Edmonds.

On February 24, 2009, the Board issued a Notice of Hearing setting the date for the Prehearing Conference and a tentative schedule for the case.

On March 18, 2009, the Board received Petitioner's First Amended Petition for Review.

Presiding Officer Margaret Pageler convened the Prehearing Conference at 10:00 a.m. on March 23, 2009, in the Board's offices at 800 Fifth Avenue, Seattle. Board members David Earling and Edward McGuire were also present. Petitioner Lora Petso appeared *pro se.* Scott Snyder represented the City of Edmonds and was accompanied by Edmonds Parks Director Brian McIntosh. Also in attendance was Nina Carter, Board member of the Western Washington Growth Management Hearings Board.

The Board discussed with the parties the possibility of settling or mediating their dispute to eliminate or narrow the issues. The Board encourages such efforts and can arrange for mediation or settlement assistance by members of the Eastern or Western Growth Management Hearings Boards. If the parties are pursuing settlement, with or without Board assistance, they may so stipulate in a request for a settlement extension, which must be signed by the City and Petitioners. The Board is empowered to grant settlement extensions for up to ninety days.

The Board reviewed its procedures for the Hearing, including the filing of the Index to the record below; Core Documents to be provided by Respondent[71]; briefing and exhibits; dispositive motions; the Legal Issues to be decided; and a final schedule of deadlines. The

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document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

[71] The Board identified the following Core Documents to be provided by Respondent: City of Edmonds Comprehensive Plan, Parks Plan before and after amendment (or line-through version), CFP, ECDC Chapter 20.00 or relevant portions. Two copies of each Core Document must be provided to the Board by the date indicated in the Final Schedule for filing of motions.

City submitted three Document Indices: Section 1 – Planning Board Minutes, Section 2 – City Council, and Section 3 – Parks Department.

On March 26, 2009, the Board issued its Prehearing Order including a restatement of Legal Issues. Petitioner filed a timely Motion to Amend and Objection to Prehearing Order, and on April 3, 2009, the Board issued a Corrected Statement of Legal Issues.

On March 23, 2009, the City provided a Document Index in three sections (1) Planning Board Minutes, (2) City Council, and (3) Parks Department. On April 7 the City submitted Revised Document Indices (in three sections) and the following Core documents:

- Core A - Edmonds Comprehensive Plan as amended 2007
- Core B - Edmonds Comprehensive Plan effective 12/08
- Core C - Edmonds Transportation Element, 2002
- Core D - 2000 Bikeway Comprehensive Plan
- Core E - Walkway Plan, 2002 Update
- Core F - Parks, Recreation and Open Space Comprehensive Plan 2001
- Core G - Parks, Recreation and Open Space Comprehensive Plan 2008

On April 7, 2009, the Board received the First Stipulation as to Facts, Documents and Procedures, on behalf of both parties.

On April 9, 2009, Petitioner filed a Motion to Supplement the Record with 14 attachments. The City filed its Response and Objections to Motion to Supplement on April 23, 2009. On April 30, 2009, the Board received Petitioner's Rebuttal to Response to Motion to Supplement the Record.

The Board issued its Order on Motion to Supplement the Record on May 11, 2009.

Briefs and exhibits on the merits were timely filed as follows:

- May 28, 2009 - Petitioner's Prehearing Brief with Petso Exhibits 1-27 (**Petso PHB**)
- June 11, 2009 - Reply Brief of Respondent City of Edmonds with City Exhibits 1-12 (**City Response**)
- June 18, 2009 – Petitioner's Reply Brief with Petso Exhibits 28-33 (**Petso Reply**)

In conjunction with its response brief, the City filed Second Amended Document Indices.

Presiding Officer Margaret Pageler convened the Hearing on the Merits at 10:00 a.m. on June 25, 2009, in the Board's offices at 800 Fifth Avenue, Seattle. Board member David Earling was also present. Petitioner Lora Petso appeared *pro se*, accompanied by Roger Hertrich. Scott Snyder represented the City of Edmonds and was accompanied by Edmonds Parks Director Brian McIntosh and by Carry Porter of the Ogden Murphy law firm. Court reporting services were provided by Christy Sheppard of Byers and Anderson. The hearing was adjourned at 12:30 p.m. The hearing provided the Board the opportunity to ask clarifying questions of the parties.

At the Hearing on the Merits, the presiding officer asked the City to provide a complete copy of the consulting contract for the Parks Plan amendment process. The Board received the document – identified as Index 2-G - on July 1, 2009. The Board also ordered a transcript of the hearing. The transcript was received on June 30.

APPENDIX B

Legal Issues in CPSGMHB Case No 09-3-0005

Legal Issue 1. Notice and Public Participation.[72] Did the City's adoption of the Parks Plan amendment fail to comply with the requirements of RCW 36.70A.010, RCW 36.70A.020(11), RCW 36.70A.035, RCW 36.70A.130, RCW 36.70A.140, Goal B.1 on page 3 of the General Comprehensive Plan, and, as applicable, WAC 305-195-600, and ECDC 20.00.010-050, as follows:

> 1(a). Significant changes to the Park amendment were considered and adopted without providing an opportunity for public comment and without providing the additional information requested by council and the public.
>
> 1(b). The City has failed to either establish or broadly disseminate a public participation program providing early and continuous participation, and, to the extent any program exists, it was not followed for the Park amendment for reasons including failure to publish notice of the planning board hearing.
>
> 1(c). The City failed to provide meaningful (web input disregarded due to possibility of abuse) and fairly representative (composition of committee not representative of the community) public input into the development of the Park amendment.

Legal Issue 2. Once-per-year Amendment.[73] Did the City's adoption of the Parks Plan amendment fail to comply with the requirements of RCW 36.70A.130, RCW 36.70A.010, RCW 36.70A.020(11), RCW 36.70A.035, RCW 36.70A.140, Goal B.1 on page 3 of the General Comprehensive Plan, WAC 305-195-630, and ECDC 20.00.010 in that proposed plan amendments were considered more than once per year, and were not considered concurrently so that cumulative effects could be ascertained and the integrity of the comprehensive plan preserved.

Legal Issue 3. Inconsistency.[74] Is the Parks Plan amendment inconsistent with the GMA, the General Comprehensive Plan and the CFP, and internally inconsistent, in violation of RCW 36.70A.010, RCW 36.70A.070 (preamble), RCW 36.70A.070(8), RCW 36.70A.110(2), RCW 36.70A.130, WAC 365-195-070, -500, and ECDC 20.00.050(A), as follows:

> 3(a). The Park amendment does not use the same population projections or the same park acreage as the General Plan and CFP.

[72] Legal Issue 1 incorporates Issues 1, 2, 3, and 12 from the First Amended Petition for Review.
[73] Legal Issue 2 is issue 2 in the First Amended Petition for Review.
[74] Legal Issue 3 incorporates Issues 4-9, 15 and 21 from the First Amended Petition for Review.

3(b). The CFP specifically illustrates the playfield at Sherwood Park as an interlocal project to be funded in the CFP, but the Park amendment has dropped reference to the ILA's for park use at Sherwood Park, does not include Sherwood Park as a Park on the Park map, and omits the playfields at Sherwood Park from the field inventory.

3(c). The Park amendment does not include the same projects or calendar years as the CFP and is internally inconsistent regarding funding.

3(d). Park needs are identified, significant funding is identified and available, but the Parks Plan fails to identify planned acquisitions which would address identified park needs.

3(e). Language was added to the Park amendment to suggest that funding is not available, when, in fact, significant funding is available, particularly for park improvement.

3(f). The Park amendment was not current when adopted since the plan was adopted in late 2008 but contains a funding plan dating back to 2007 and 2008, and the plan expressly admits that population numbers were deliberately not updated.

3(g). The Park amendment fails to apply EDCD 20.00.050 or meet the standards contained therein.

3(h).The Park amendment maps do not include the Esperance UGA, and the amendment is inconsistent with purpose E on page 1 of the General Plan, effect B on page 2 of the General Plan, LOS goals on page 85 of the General Plan, and concurrency goal A.2. on page 88 of the General Plan.

Legal Issue 4. Lands Useful for Public Purposes.[75] Does the Parks Plan amendment violate RCW 36.70A.150 by failing to designate parks on properties not owned by the City as "lands useful for public purposes," and failing to plan for acquisition of those properties?

Legal Issue 5. Goal 9 – Open Space and Recreation.[76] Does the Parks Plan amendment fail to comply with RCW 36.70A.020(9), RCW 36.70A.010, and Goal I on page 5 of the General Plan, as follows:

5(a). The Park amendment replaces planned park acquisition with unplanned, "politically convenient" park acquisition.

5(b). The Park amendment drops an established ILA for park use when the public need for the ILA and the park use remains.

[75] Legal Issue 4 is Issue 20 from the First Amended Petition for Review.
[76] Legal Issue 5 incorporates Issues 10 and 11 from the First Amended Petition for Review.

Legal Issue 6. Mandatory Comprehensive Planning.[77] Does the Parks Plan amendment violate RCW 36.70A.070 as follows:

6(a). The Park amendment omits facilities from the inventory, fails to accurately develop level of service standards, and omits thousands of MUGA residents from the level of service calculation.

6(b). The Park amendment fails to include the ILA's for park use at Sherwood Park in the evaluation of intergovernmental opportunities for a regional approach to meeting park needs.

6(c). The Parks Plan was not correctly amended.

Legal Issue 7. Urban Growth Area Planning.[78] Does the Parks Plan amendment violate RCW 36.70A.110 and RCW 36.70A.130 by excluding acres and residents of Esperance from the inventory, level of service calculation, and map.

Legal Issue 8. Goal 12 – Public Facilities and Services.[79] Does the Parks Plan amendment fail to comply with RCW 36.70A.020(12), RCW 36.70A.010, RCW 36.70A.110, Goal B.2 on page 3 of the General Plan and Goals I and L on page 5 of the General Plan, as follows:

8(a). The Park amendment does not have adequate parks for current development and to meet development needs for the 20-year planning period.

8(b). The Park amendment does not have adequate parks for current development and adopts a zero level of service for adult baseball, softball and soccer fields and year round pools.

Legal Issue 9. Action in Conformity with Plan.[80] Does the City's action in adopting the Parks Plan amendment violate RCW 36.70A.120 because the City failed to act in conformity with the General Plan?

[77] Legal Issue 6 incorporates Issues 16, 17, and 18 from the First Amended Petition for Review.
[78] Legal Issue 7 is issue 19 in the First Amended Petition for Review.
[79] Legal Issue 8 incorporates Issues 13 and 14 from the First Amended Petition for Review.
[80] Legal Issue 9 is issue 22 in the First Amended Petition for Review.

APPENDIX C – ECDC 20.00

Chapter 20.00

CHANGES TO THE COMPREHENSIVE PLAN

Sections:

20.00.000 Scope.

The requirements of this chapter apply to proposed changes to the existing comprehensive plan and to future adoption of any new elements to the plan or a new plan. [Ord. 3076 § 1, 1996].

20.00.010 Submittal of amendments.

In order to meet the requirements of the Washington State Growth Management Act, Chapter 36.70A RCW, the city shall undertake comprehensive plan amendments only once per year. All amendments requested by the city or private parties shall be reviewed concurrently to ensure that the integrity of the comprehensive plan is preserved. All comprehensive plan amendment requests are to be provided in writing, on a form provided by the director, and are to be submitted no later than December 31st of every year, or the first business day after December 31, should that date occur on a holiday or weekend. The council may, for good cause shown, accept applications after the prescribed deadline. [Ord. 3278 § 1, 1999; Ord. 3076 § 1, 1996].

20.00.020 Notice.

Upon receipt of a completed application for a comprehensive plan amendment, or upon direction of the council, and following department review, hearings shall be set before the planning board and city council. In lieu of all other methods of giving notice, notice shall be given for a public hearing on a proposed change to the comprehensive plan by publication at least 10 days before the hearing in a newspaper of general circulation in the city of Edmonds as set forth in ECC 1.03.030 setting forth the time, place and purpose of the hearing. Continued hearings may be held by the planning board or city council, but no additional notices need be published. [Ord. 3076 § 1, 1996].

20.00.030 Receipt by mayor and clerk certification.

Within 20 working days following the adoption of a recommendation by the planning board, the board shall transmit a copy of its recommendations to the city council through the office of the mayor, who shall acknowledge receipt thereof and direct the city clerk or appropriate deputy clerk to certify thereon the date of receipt. [Ord. 3076 § 1, 1996].

20.00.040 Council action on amendments.

Within 60 days of receipt of the planning board's recommendation and the completion of the public hearing required by ECDC 20.00.020, the city council shall consider the recommendation and may at that time or subsequently approve, approve with modifications, or disapprove the proposed amendment based upon the findings required by this chapter and any other applicable provisions. Amendments to the comprehensive plan shall be adopted by ordinance. [Ord. 3076 § 1, 1996].

20.00.050 Findings.

Amendment to the comprehensive plan may be adopted only if the following findings are made:

A. The proposed amendment is consistent with the provisions of the Edmonds Comprehensive Plan and is in the public interest;

B. The proposed amendment would not be detrimental to the public interest, health, safety or welfare of the city;

C. The proposed amendment would maintain the appropriate balance of land uses within the city; and

D. In the case of an amendment to the comprehensive policy plan map, the subject parcels are physically suitable for the requested land use designation(s) and the anticipated land use development(s), including, but not limited to, access, provision of utilities, compatibility with adjoining land uses and absence of physical constraints. [Ord. 3076 § 1, 1996].

Chapter 20.05

CONDITIONAL USE PERMITS

Sections:

20.05.000 Scope.

A conditional use permit may be approved in cases where it is authorized by state law and/or city ordinances including the zoning ordinance (ECDC Titles 16 and 17) and when the findings required by this chapter can be made.

20.05.010 Criteria and findings.

No conditional use permit may be approved unless all of the findings in this section can be made.

A. That the proposed use is consistent with the comprehensive plan.

B. Zoning Ordinance. That the proposed use, and its location, is consistent with the purposes of the zoning ordinance and the purposes of the zone district in which the use is to be located, and that the proposed use will meet all applicable requirements of the zoning ordinance.

C. Not Detrimental. That the use, as approved or conditionally approved, will not be significantly detrimental to the public health, safety and welfare, and to nearby private property or improvements unless the use is a public necessity.

D. Transferability. The hearing examiner shall determine whether the conditional use permit shall run with the land or shall be personal. If it runs with the land and the hearing examiner finds it in the public interest, the hearing examiner may require that it be recorded in the form of a covenant with the Snohomish County auditor. The hearing examiner may also determine whether the conditional use permit may or may not be used by a subsequent user of the same property.